

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-CV-22538-RKA

PIERCE ROBERTSON, *et al.*,

Miami, Florida

Plaintiff(s),

January 6, 2023

vs.

MARK CUBAN, *et al.*,

Defendant (s) .

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DISCOVERY HEARING  
TRANSCRIBED FROM DIGITAL AUDIO RECORDING  
BEFORE THE HONORABLE LISETTE M. REID  
UNITED STATES MAGISTRATE JUDGE

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1 Thereupon,

2 the following proceedings were held via Zoom videoconference:

3 THE COURT: Good morning. So we are here to discuss  
4 some discovery matters in case No. 22 22538.

5 I would like appearances from counsel. Let's start  
6 with the plaintiffs.

7 MR. MOSKOWITZ: Good morning, your Honor. Thank you  
8 again for giving us this time. This is Adam Moskowitz, from  
9 the Moskowitz Law Firm, and with me I have my partners Joey  
10 Kaye and Howard Bushman.

11 THE COURT: OK. Very good.

12 MR. BOIES: Good morning, your Honor. This is David  
13 Boies, of Boies Schiller Flexner, also representing the  
14 plaintiffs, and with me today I have my colleagues Steve Zack,  
15 Tyler Ulrich, and Alexander Boies.

16 THE COURT: Very good.

17 MR. BOIES: I think those are the only people on.  
18 Mr. Zack had people and he will identify them.

19 THE COURT: OK. Very good.

20 The defendants.

21 MR. BEST: Good morning, your Honor. Christopher  
22 Knight, from Fowler White Burnett, and from Fowler White I also  
23 have Ally Tifford and Esther Galicia.

24 The Brown Rudnick firm is also on the line. Sig  
25 Wissner-Gross, who will be handling here, of course will

1 introduce his team.

2 MR. WISSNER-GROSS: Good morning, your Honor. Happy  
3 New Year. Joining me are Rachel Wolkinson and Steve Best, who  
4 will be participating as well.

5 THE COURT: OK. I am going to switch from full view  
6 to speaker view. Since there are so many people on the screen,  
7 it will make it a lot easier.

8 All right. So, Mr. Moskowitz, we will start with  
9 looking at the issues that you are concerned about and we will  
10 do our best to get through all of these issues today. I think  
11 some of them are overlapping between the plaintiffs and  
12 defendants.

13 MR. MOSKOWITZ: I think they are, your Honor, and  
14 thank you so much and thank you to our excellent opposing  
15 counsel. It's been wonderful dealing with them almost on a  
16 daily basis. They have all been very cooperative.

17 I think we have three issues mainly to focus on, and  
18 we need a little help from your Honor just to move these things  
19 along. I have got about just five minutes. I will go through  
20 them all, and then Mr. Boies will have just one or two minutes,  
21 and then we will turn it over to our fine esteemed defense  
22 counsel.

23 Joey, why don't you help me with putting up the  
24 slides. I think we have like five today that I made. They are  
25 not professionally done, your Honor, so excuse me for my

1 creativity.

2 So let's take it from where we left off. We left your  
3 Honor at December 20th, if you remember, and at the end of the  
4 hearing we said that we worked together on an extension of time  
5 because we needed to do a little bit more discovery and we were  
6 going to possibly add a couple of plaintiffs from Florida,  
7 which is their right.

8 After the hearing the defendants changed their mind  
9 and they didn't want us to do a joint motion because they said  
10 some of the discovery should not be extended, some of their  
11 arguments, which they have every right to raise. So we filed  
12 our own expedited motion for an extension of time until  
13 February 24th. So that's now the set date.

14 We can amend our complaint, and we are going to  
15 certainly ask for leave to possibly add a couple of Florida  
16 plaintiffs and make a couple of other corrections to the  
17 complaint, and we made the arguments to Judge Altman that --  
18 again, this is a simple case -- if these are unregistered  
19 securities, if every single one of the Voyager interest  
20 accounts is unregistered and Mr. Cuban did any promotion,  
21 that's all that plaintiffs need to prove. There is no  
22 reliance. It is a strict liability standard. And we state in  
23 our motion, they are still attacking plaintiffs that they  
24 didn't use the phone or see this. That's not necessary.

25 As we said, after discovery is done and the motion to

1 dismiss is ruled on, we are going to move for certification,  
2 which we have already done. We did it early in the case. He  
3 said do it after the motion to dismiss. And we are going to  
4 move for summary judgment, because that is all -- really the  
5 heart of this case is are these unregistered securities and did  
6 Mr. Cuban promote them. Because if he did, the law is strict  
7 liability.

8 So Judge Altman granted it. He said there is no  
9 separating of the discovery. We are going to let the  
10 plaintiffs have all of the time until February 24th.

11 Joey.

12 So what's important is your Honor ruled on three  
13 issues, at least for us. We can get the plaintiffs' documents  
14 in discovery. First your Honor ruled that we are to get all  
15 jurisdictional discovery by January 3rd. We really haven't  
16 gotten any, and we are going to explain to you why we really  
17 have gotten none.

18 This isn't our first rodeo. We spent seven months  
19 against Voyager doing jurisdictional discovery as well, and  
20 they produced none. Then we were able to find out that Florida  
21 was one of the largest states for Voyager. Maybe \$40 million  
22 were in profits. So we understand that, and we will go through  
23 that.

24 Second, we asked for just two depositions, and this is  
25 months ago. They identified four people that had personal

1 knowledge of the Voyager/Mavericks agreement, four that worked  
2 for the Mavericks. Two they said were lawyers and two were not  
3 lawyers.

4 So Mr. Mackey and Mr. Tapply are the marketing  
5 directors and they are in communications, and we asked for  
6 their depositions. They have not given us any dates. And we  
7 will show your Honor said you could take them in January, and  
8 we said again, very reasonably, any time, anyplace, just let us  
9 know. They said they are not available.

10 Then finally we asked for a date for Mr. Cuban's  
11 deposition, and they said we are going to give you one, but you  
12 are going to limit your deposition of him to just jurisdiction.  
13 We said why. We had a discussion about this with your Honor.  
14 Judge Altman denied the motion to stay. We are staggering the  
15 jurisdiction and the merits discovery like you wanted. You  
16 asked us to wait. We said don't take the Mavericks' officials  
17 that are attorneys, so we will wait for them too. But what  
18 grounds would it be to limit Mr. Cuban's deposition? It is the  
19 same time limits.

20 We have serious questions here about trading, insider  
21 trading, how much did he receive. These are all, as you will  
22 see, going to be relevant for jurisdiction.

23 Mr. Cuban had his own Voyager account. What is in it?  
24 Is there \$5? Is there \$500 million? That's clearly relevant  
25 for jurisdictional discovery because you have to say, do you

1 have a financial interest in what you are doing. So we need to  
2 find that.

3 What happened yesterday, surprisingly, is in three  
4 weeks we have our first third-party deposition, and it is Mr.  
5 Ehrlich. He was the CEO of Voyager. Main guy. So he was all  
6 set to be deposed and give us all his documents in three weeks.

7 Mr. Cuban's counsel emails him and says, we want to  
8 let you know Judge Reid has bifurcated discovery, so you don't  
9 really have to give all your discovery, but you could just give  
10 them the jurisdictional discovery. We said, what are you  
11 kidding? Mr. Ehrlich was set five months ago for deposition;  
12 he's got to produce his documents.

13 The problem is, I am sure he is going to produce a lot  
14 of jurisdictional discovery that we didn't get from Mr. Cuban,  
15 because we said to him, we want all documents regarding this  
16 press conference. So that is something separate. He is not  
17 going to appear today, the counsel for Mr. Ehrlich, but he may  
18 object, he said, at some later date. But what would be the  
19 grounds to limit Mr. Cuban's deposition? It is the same thing.

20 Joey, let's go to the second slide.

21 So I am not going to go through those video clips we  
22 played with your Honor last week. We played seven of them.

23 THE COURT: We don't need to hear them again. I  
24 understand the issues.

25 MR. MOSKOWITZ: We are not going to play them at all,

1 but the reason they are important is because it is a major  
2 international press conference that was live on the internet --

3 THE COURT: No, I understand.

4 MR. MOSKOWITZ: -- that was planned -- I'm sorry?

5 THE COURT: I understand, and you did make that clear.

6 MR. MOSKOWITZ: Yes.

7 THE COURT: Let me go back to this. There is a  
8 question as to bifurcated discovery. Is that something the  
9 plaintiffs wanted? Is there some reason to bifurcate  
10 discovery? Let's talk about that.

11 MR. MOSKOWITZ: Thank you, your Honor.

12 MR. KNIGHT: Your Honor, if we could have Mr. --

13 MR. MOSKOWITZ: Not at all, your Honor --

14 MR. KNIGHT: I would just --

15 MR. MOSKOWITZ: -- for the plaintiffs. We didn't want  
16 to bifurcate anything.

17 THE COURT: OK.

18 MR. MOSKOWITZ: Judge Altman has decided, Judge Altman  
19 said, I am not staying, I am not bifurcating discovery.

20 THE COURT: OK.

21 MR. MOSKOWITZ: What the defendants tried to say is  
22 somehow your Honor at December 20th said there is a bifurcation  
23 between jurisdiction and merits. We agree that they had to  
24 produce all their jurisdiction discovery by January 3rd and all  
25 the others by January 13th.

1                   THE COURT: Because there was a deadline that was  
2 looming, at least --

3                   MR. MOSKOWITZ: Absolutely.

4                   THE COURT: -- with respect to that. OK.

5                   MR. MOSKOWITZ: Right on point, your Honor. But you  
6 said, if you could go to Judge Altman and you could get a  
7 little bit of time, then we don't really have to worry about  
8 these time limits. And we did. And Judge Altman entered an  
9 order saying, I understand that you are now getting all this  
10 discovery. You haven't yet taken Mr. Cuban's deposition after  
11 five months. Now they are going to give you a date until  
12 February 24th, should give everybody time to get all of the  
13 discovery because I am not staying any discovery.

14                  THE COURT: OK.

15                  MR. MOSKOWITZ: That is what Judge Altman said.

16                  THE COURT: Thank you, Mr. Moskowitz.

17                  Let me see if I can turn to Mr. Knight or  
18 Mr. Wissner-Gross and see if I can get a response on that  
19 issue.

20                  MR. WISSNER-GROSS: Your Honor, thank you very much.  
21 Actually, we have a little bit of a PowerPoint. If we want to  
22 do it issue by issue, we are happy to.

23                  Maybe the best way, John, if you could take over and  
24 we will address his point.

25                  THE COURT: I would like to do issue by issue. It is

1 a little easier for me, and that is an important issue.

2 MR. WISSNER-GROSS: John, if you could put up the  
3 slide dec.

4 Just at a high level, your Honor, I think from our  
5 perspective we think that the main issue is that we do need to  
6 get jurisdictional discovery completed by mid-February.

7 It is correct that at the December 20th conference  
8 your Honor did direct that Mr. Cuban's deposition, which has  
9 been set now for February 2nd, should focus on jurisdictional  
10 discovery, and I guess I will have to fact check Mr. Moskowitz  
11 as we go, but Judge Altman did not weigh in the way he  
12 described it. Judge Altman referred all discovery issues to  
13 your Honor, and it is clearly within your Honor's purview to  
14 decide how and in what order discovery should proceed.

15 THE COURT: OK.

16 MR. WISSNER-GROSS: With that context in mind, your  
17 Honor, the defendants have been fully compliant with what we  
18 were directed to.

19 So let's start with --

20 THE COURT: Perhaps I should have made myself clear.  
21 It may be my fault here, and I want to just jump in.

22 What we were talking about at the time was there was  
23 an urgent deadline for the response to the motion to dismiss on  
24 the jurisdictional issue, so I had some concern, because I  
25 think at that time it wasn't possible to get all of the

1 discovery within the deadline that we needed. Once you got the  
2 extension, it seems to me to be more efficient to simply move  
3 forward with your depositions and your discovery at this point.

4 MR. WISSNER-GROSS: Let me address that, your Honor.

5 If we can get the slide back on.

6 Let's talk about -- John, are you able to take over?

7 A VOICE: Yes. One second.

8 MR. BEST: Your Honor, while they are taking over --  
9 this is Stephen Best -- also framed in that discussion at our  
10 earlier hearing was the fact that we had concerns that the  
11 plaintiffs, the Florida-based plaintiffs, had any standing in  
12 this case. So we can fact check again what Mr. Moskowitz has  
13 said, but so far the evidence is clear there is no standing for  
14 the Florida-based plaintiffs in this case, which is part and  
15 parcel as to why we asked for jurisdictional discovery to go  
16 first.

17 I am going to turn it back to Mr. Wissner-Gross.

18 MR. WISSNER-GROSS: First fact check, your Honor,  
19 Mr. Moskowitz just said there weren't documents produced by the  
20 Mavs. Well, that is just factually not correct.

21 On January 3rd, after a huge amount of effort,  
22 reflected on this slide --

23 MR. BEST: Sir, why don't we focus on what the court  
24 has asked for, which is why there should be limited  
25 jurisdictional --

MR. WISSNER-GROSS: We will get to that very quickly. I wanted to address this point.

We produced over 1100 pages of documents on jurisdiction, all of which, if you go to the next slide, confirm that what was said in the declarations on the jurisdictional motion were all correct. There is limited contact with Florida. The Mavs and Mr. Cuban came here for away games. Mr. Cuban came here a couple of times on a personal vacation. He never met with Mr. Ehrlich at any point in time, including at a crypto conference in January.

Go to the next slide.

MR. BEST: Let me just interject, Sig.

Your Honor, not only did we produce all these documents, but we sent a cover letter identifying, in chronological form, the events that took place, citing the Bates numbers for these documents, and having, if you will, a full detailed chronology of the jurisdictional events at issue.

So not only did we produce documents, but we accompanied it with work product showing a summary of the chronology so that it would make it easy for plaintiffs to walk through the documents we provided for them.

MR. WISSNER-GROSS: So it is critical, your Honor -- if we go to the next slide -- to understand the significance of the jurisdictional discovery, why that should be the focus, plus the fact that there are three Florida plaintiffs, we

1 think, who have completely fabricated, manufactured claims. We  
2 think we have already seen evidence of perjury in declarations  
3 they have submitted. That is why we wanted to accelerate their  
4 depositions, have them in Florida. Unfortunately,  
5 Mr. Robertson has fled the jurisdiction and is in Illinois.

6 On the issue of why it makes sense to limit  
7 Mr. Cuban's deposition to jurisdictional issues, well, we  
8 recognize, obviously, your Honor had made that comment at the  
9 hearing on the 20th, but there are several extremely practical  
10 reasons for doing so.

11 At various points, and I try to keep track of how many  
12 different people Mr. Moskowitz has threatened to add to the  
13 case. By my latest calculations it is either five or six  
14 additional defendants that he wants to add. He has noticed the  
15 deposition of Mr. Gronkowski, the former NFL football player.  
16 He claims to have served a deposition notice on Sullivan &  
17 Cromwell, the law firm for FTX, which he said he might add.  
18 What they do in this lawsuit remains to be seen, although he  
19 has a related case against FTX. He has threatened to bring in  
20 the National Women's Soccer League.

21 All of these, at least Mr. Gronkowski and the Women's  
22 Soccer League, because of other associations of sponsorship  
23 agreements or otherwise with Voyager, and he's even threatened  
24 to bring in others as well.

25 It makes certainly sound sense that for Mr. Cuban, who

1 doesn't even think he should be in the case jurisdictionally,  
2 to have an opportunity of having all fact -- all jurisdictional  
3 issues developed, teed up, and completed before Mr. Moskowitz  
4 either amends his complaint or responds to the pending motion  
5 to dismiss; otherwise, we are going to be subject to more than  
6 one deposition of Mr. Cuban.

7 What Mr. Moskowitz just said, frankly, I think he  
8 makes it up out of thin air, unfortunately, about what he  
9 thinks he is going to find at a deposition of Mr. Cuban.  
10 Mr. Cuban appeared once, your Honor.

11 THE COURT: Thank you, Mr. Wissner-Gross, and I hear  
12 you. It is just, I think on both sides of this case I am  
13 hearing a lot of substantive argument and I want to simply stay  
14 focused on whether the discovery should be bifurcated or not.

15 MR. WISSNER-GROSS: Your Honor, let me tell you what  
16 we are proposing and not proposing.

17 THE COURT: OK.

18 MR. WISSNER-GROSS: We are prepared, and we have been  
19 directed, to produce merits documents beginning, on a rolling  
20 basis, on January 13th. We have begun that process. There are  
21 a lot of documents. There were 45,000 documents that have been  
22 identified. We reviewed about 25,000 today. We are going to  
23 start producing documents on January 13th on a rolling basis,  
24 although we completed the production of jurisdictional  
25 documents. We are saying, fine, go ahead, we are going to

1 produce that to you; we are going to produce on a rolling  
2 basis.

3 What we are saying, though, is, as to Mr. Cuban, it  
4 makes eminent sense to have his deposition limited to the issue  
5 of jurisdiction. I proposed that they are limited to the seven  
6 hours, and that if they use two hours on jurisdiction, they  
7 only have five hours left. We are not going to advance that  
8 position. We think his jurisdictional deposition probably  
9 needs no more than an hour or two, but it is a short  
10 deposition. Let them take that.

11 They are going to get the documents produced on a  
12 rolling basis. As far as any issue of any substantive  
13 deposition, frankly, I would like to see if he is dismissed  
14 from the case. But at a minimum, if they are going to bring in  
15 five or six new defendants, which Mr. Moskowitz repeatedly  
16 threatens to do and he is talking about new plaintiffs, many  
17 new defendants, maybe change the theory of his case, it  
18 certainly makes sense to wait for Mr. Cuban's substantive  
19 deposition on the merits until he knows who the defendants are,  
20 what claims are in the case, etc. There is absolutely no  
21 prejudice whatsoever to the plaintiffs to do that.

22 So it is bifurcation in the sense of let's take his  
23 jurisdictional deposition. We have locked in a date. He will  
24 get documents. Whatever he is going to do in terms of amending  
25 the complaint. Frankly, no matter what he gets it is not going

1 to solve the jurisdictional problem, which is a gating issue.  
2 Let's get that completed. The thought is, let's keep the case  
3 moving.

4 Yes, we are going to produce the jurisdictional stuff  
5 and we will start producing the balance of the documents on a  
6 rolling basis starting on January 13.

7 We haven't even gotten to the plaintiffs, your Honor,  
8 which I -- we haven't gotten any cooperation from the  
9 plaintiffs. We have gotten some documents from Voyager.

10 Your Honor, if you remember, you had suggested, after  
11 we wanted to depose all 12, you said, we don't want them flying  
12 in by jet. So we said let's take the three Florida plaintiffs,  
13 and we still haven't gotten their full production. We have  
14 gotten some documents. We got some documents from Voyager. We  
15 have been trying, without success, to have the three Florida  
16 plaintiffs deposed in Miami. Mr. Robertson, we can go into it,  
17 your Honor. There are so many --

18 THE COURT: I want to stick to the issue of the  
19 bifurcated discovery and try to resolve that right away.

20 So what you are asking for is that I enter an order  
21 allowing the bifurcation of discovery only with respect to  
22 Mr. Cuban or with respect to the entire case? I just want to  
23 be clear on what you are requesting.

24 MR. WISSNER-GROSS: I think that in terms of  
25 deposition, I think what we have heard from Mr. Ehrlich's

1 counsel -- we can get to that also because I think  
2 Mr. Moskowitz completely misrepresented what he said Ehrlich's  
3 counsel, but that it makes perfect sense to have depositions of  
4 the defendants focused initially on jurisdiction.

5 So Mr. Cuban's deposition -- we have dates for later  
6 in February for Mr. Mackey and Tapply. I don't think they will  
7 add much in jurisdiction.

8 Mr. Ehrlich, his counsel had -- by the way, Mr.  
9 Ehrlich was a defendant, was dismissed with prejudice, is a  
10 nonparty, lives in Connecticut, represented by separate  
11 counsel. He is still the CEO of Voyager, which is in  
12 bankruptcy. There is sensitivity about the bankruptcy  
13 implications of any deposition.

14 There have been three different forms of subpoena sent  
15 on him. None issued out of the Southern District of Florida.  
16 For whatever reason Mr. Moskowitz didn't choose to go to  
17 Connecticut to get a subpoena issued. So it is all consensual.

18 Mr. Ehrlich's counsel, my understanding, has said,  
19 look, I'm prepared to make him available on jurisdictional  
20 issues. Mr. Ehrlich has been sued in another class action  
21 relating to Voyager, contrary to what Mr. Moskowitz said last  
22 time where there is only one case, and he wants to defer any  
23 substantive deposition of him until a later point in time.  
24 Frankly, there is no prejudice to Mr. Moskowitz on that either.

25 He has offered to produce to him, I gather, various

1 documents.

2 THE COURT: I can tell you, honestly my concern is  
3 going to be that we will all get there to deposition and then  
4 the questions will be asked and then the argument as to whether  
5 some answer is jurisdictional or whether that question is only  
6 jurisdictional or it goes to the merits. There may be more  
7 disputes over that than it is worth.

8 I think also for the sake of efficiency, honestly, I  
9 understand that the gentlemen that we are talking about are all  
10 very, very busy individuals. If you present them for  
11 deposition and you complete the depositions, they're done.  
12 What about the sake of efficiency?

13 MR. BEST: But they are not done, your Honor. This is  
14 Stephen Best. You already heard Mr. Moskowitz say he's going  
15 to amend the complaint, because he's effectively conceded that  
16 the plaintiffs at present, the Florida-based plaintiffs, don't  
17 have standing. So we are going to be rehashing this either  
18 through an amended complaint, one, or, two, all these  
19 individual defendants that he wants to add, Mr. Gronkowski,  
20 Sullivan & Cromwell, and then we are going to be back at the  
21 table with people getting their shots at subsequent depositions  
22 of these people.

23 So indeed, the efficient process, I would argue, is  
24 that we limit this to jurisdictional discovery, because we have  
25 already heard that Mr. Moskowitz is going to at least seek

1 leave to amend the complaint, which we are going to object to,  
2 and so we are going to be in a situation where we have an  
3 entire new complaint before us. He is going to come in and say  
4 since we have a new complaint, we get to take another set of  
5 depositions.

6 MR. WISSNER-GROSS: All the new defendants are going  
7 to want to depose everyone.

8 So, your Honor, the way this is typically done -- we  
9 understand the mandate to move forward. We are giving you a  
10 path. Mr. Moskowitz is going to get plenty of documents. He  
11 got a thousand pages already. I don't think it will solve his  
12 jurisdictional impediment, but he will be able to see whatever  
13 the communications were leading -- let's talk about what he  
14 will get in document discovery.

15 He is going to see any communications between Voyager  
16 and the Mavs to deal with the sponsorship agreement, the  
17 communications in connection with that. There was one press  
18 conference on October 27th. He will get everything in  
19 connection with that press conference. Unfortunately for  
20 Mr. Moskowitz, there were no meetings in Florida, there was no  
21 targeting of Florida, etc. So the documents that he will get  
22 are not going to help them on jurisdiction, but the documents  
23 are going to give him the full story of the very limited, very  
24 circumscribed relationship that the Mavs had with Voyager, who  
25 also, by the way, had a business relationship with professional

1 athletes, with women's soccer, etc. He is going to get all of  
2 this. So if the issue is him having sufficient information to  
3 file yet another frivolous complaint or an amendment, he will  
4 have it.

5 THE COURT: Right.

6 MR. WISSNER-GROSS: All we are saying is that by  
7 directing that Mr. Cuban be deposed on all subjects, all you're  
8 doing is inviting Mr. Cuban being deposed a second time when  
9 the defendants come in and say they didn't have the  
10 opportunity.

11 THE COURT: Let me make sure I understand. Your  
12 motion at this point is to bifurcate discovery only with  
13 respect to the depositions of which individuals?

14 MR. WISSNER-GROSS: Well, certainly Mr. Cuban. We  
15 can't speak for Mr. Ehrlich. A, we don't represent him. He is  
16 not before the court. That is really not an issue for today.  
17 So we represent Mr. Cuban.

18 Obviously, the Mavs' 30(b)(6) witness -- we haven't  
19 talked about that -- we will make someone available, a 30(b)(6)  
20 witness, on jurisdiction. I would say there are two marketing  
21 guys that they want to depose. We will make them available on  
22 jurisdiction as well.

23 We are perfectly happy to bring people back later. We  
24 think that the jurisdictional -- actually, the jurisdictional  
25 context are so severable and so limited, and that is why we

1 wrote Mr. Moskowitz a letter. We went ahead and summarized all  
2 of it for him to save him some work. We think it is actually a  
3 very easy exercise here.

4 I can spend a minute, and I think I have already done,  
5 outlining the nature of the contacts with Florida. They don't  
6 rise to any --

7 THE COURT: I understand.

8 MR. BEST: The depositions should be jurisdictional  
9 based only until the motion to dismiss is heard, noting that  
10 all of these witnesses can and will be called again,  
11 particularly since Mr. Moskowitz has already indicated to this  
12 court that he is going to seek leave to amend the complaint.

13 THE COURT: OK.

14 MR. BEST: Thank you.

15 THE COURT: Let me look at the motion to dismiss. Is  
16 the motion to dismiss entirely based upon jurisdiction?

17 MR. BEST: No.

18 MR. WISSNER-GROSS: No. There are three elements,  
19 your Honor.

20 THE COURT: OK.

21 MR. WISSNER-GROSS: Jurisdiction --

22 THE COURT: That is my concern. Go ahead.

23 MR. WISSNER-GROSS: We said that is a gating issue.  
24 We have also said that if the three Florida plaintiffs are gone  
25 that under settled law in this district -- it is a diversity

1 case, only a state law claim, which, by the way, contrary to  
2 what Mr. Moskowitz said, involves active claims of reliance.  
3 So half the complaint is a consumer fraud statute which  
4 requires reliance. But if the three Florida plaintiffs are  
5 gone, the balance of the plaintiffs have no standing in this  
6 jurisdiction.

7 So there is a 10b-5, Rule 9b portion saying these are  
8 not cognizable claims under state law of the relevant  
9 jurisdictions. Finally, we have argued that Voyager is a  
10 necessary party.

11 THE COURT: OK.

12 MR. WISSNER-GROSS: We have told the judge that --

13 THE COURT: Then for the sake of clarity, with respect  
14 to all other discovery you're saying, I'm willing to go ahead  
15 with all the other discovery. I'm producing the documents on a  
16 rolling basis.

17 MR. WISSNER-GROSS: Yes.

18 THE COURT: That's your statement.

19 MR. WISSNER-GROSS: Yes, we are going to produce the  
20 documents on a rolling basis. Absolutely.

21 THE COURT: Not just jurisdictional but every document  
22 that's been requested.

23 MR. WISSNER-GROSS: We've completed the jurisdictional  
24 production. We have done that as directed.

25 THE COURT: OK.

MR. WISSNER-GROSS: We are prepared to produce all the other documents on a rolling basis beginning on January 13th. Absolutely.

THE COURT: OK. All right. So I think I understand you now.

Let me go back to Mr. Moskowitz, Mr. Boies, and hear your position on that argument.

MR. BOIES: Your Honor, this is David Boies. If I could just respond to one aspect of it, and that is, counsel keeps saying that they have completed their document production as far as jurisdiction is concerned. We don't agree with that.

One of the issues here is they take a very, very limited view of what is relevant to jurisdiction. Counsel said the documents show that there is no targeting of Florida. That's not what the documents show at all.

What they have done is they have produced documents that relate to travel to Florida, not all the documents with respect to marketing to Florida, not all the documents relating to the targeting of Florida, not the documents that relate to the fact that one of the purposes was to get people in Florida to participate. So they take a very, very limited and we think unrealistically limited view of jurisdiction.

In addition to that, the issues in terms of jurisdiction and merits are very much intertwined. If we take a deposition limited to jurisdiction, I can tell from things

1       they have written already and some of the things they have said  
2       today that they are going to take the position, well, your  
3       Honor, we are just asking him about his travels to Florida and  
4       you ought not to get into what was his account at Voyager, what  
5       was his relationship to Voyager and Voyager's marketing to  
6       people in Florida, what is his responsibility for Voyager's  
7       marketing to Florida.

8               All of those kinds of things are relevant not only to  
9       merits but to jurisdiction, and I think it is going to be very  
10       difficult to try and separate out merits from jurisdiction in  
11       this deposition.

12               The third thing is the argument that they're making  
13       today, which is you ought to stay the merits discovery until  
14       the motion to dismiss is heard, which is what counsel just said  
15       a couple of minutes ago, is exactly what they argued to Judge  
16       Altman and Judge Altman wisely, in our view, said no, I am not  
17       going to stay discovery. What they are really asking is a  
18       rehearing on Judge Altman's decision not to stay discovery.

19               We think that was a wise decision. We think that was  
20       the efficient decision. It was, I think, a very considered  
21       decision on Judge Altman's part.

22               THE COURT: OK.

23               MR. MOSKOWITZ: Your Honor, if I could just respond a  
24       little to the specifics in addition to the excellent points  
25       Mr. Boies made.

1                   It's been now five months. You hear from four of my  
2 esteemed defense counsel they have produced thousands of  
3 documents. We got 25 documents. That's it.

4                   They are right. They did a narrative. They said  
5 these 25 documents greatly support that we never came to Miami.  
6 But what does that have to do with the press conference, and  
7 that is what I started with, where I showed you Mark Cuban went  
8 on the internet and he said to all of the Voyager customers  
9 around the country, you need to buy this product because I am a  
10 customer, I trust them, and we're trying to get our Mav fans  
11 all around the country to buy them. Then a couple of weeks  
12 later he comes to Miami. He is the keynote speaker in the  
13 largest crypto conference, and he talks here -- remember I  
14 showed you the clip -- he said, the Miami audience is great,  
15 they're very unique. Well, where are the documents about  
16 planning that October press conference?

17                  They identify four people with personal knowledge that  
18 worked for the Mavericks that know about the Voyager/Mavericks  
19 agreement and know about the press conference. Mackey, Tapply,  
20 and two others. They promised to give us their deposition in  
21 January. We don't have it.

22                  When they were looking for documents, did they look to  
23 any documents from those four people? We don't have a single  
24 one from any of them. So they're saying they produced  
25 jurisdictional discovery. No, they didn't. It is like what

1       Mr. Boies said. Yes, Mr. Cuban didn't physically come here 50  
2       times, but that press conference targeted the Miami customers,  
3       and it was successful.

4           We get to look at the documents. Who were you  
5       targeting? Why did you have this national press conference?  
6       Who were you trying to reach? How did your numbers go up in  
7       Florida to \$40 million afterwards?

8           We are allowed to get that discovery. That is what  
9       Judge Altonaga said, and, shockingly, it was all against what  
10       Voyager had said, that we have no connections to Florida.  
11       Florida was one of their largest states.

12           So all we are saying is you ordered them to produce  
13       all jurisdictional discovery, which includes what his financial  
14       interest is. So Mr. Cuban has a Voyager account. If there's  
15       \$500 million in that account, isn't that relevant? What if  
16       there is nothing in that account and he is telling everyone in  
17       the country, I'm all in, I love Voyager. That wasn't produced.

18           So give us the jurisdictional discovery, but next week  
19       all the merits are due. So give us all of those, and then just  
20       give us those two people that you promised to give us in  
21       January, Mackey and Tapply. They are the marketing director  
22       and the communications director. That is all we asked for.

23           That is why Mr. Boies said when they asked Judge  
24       Altman to stay discovery, he said, I peeked at the merits, I  
25       think they have a claim. So this is all just regurgitating

1 that argument they lost, and now your Honor has ruled, just  
2 give them jurisdictional discovery by January 3rd, give them  
3 everything else by next week, give them three depositions.

4 That's it. Tapply, Mackey, and Cuban.

5 We don't think it needs to be bifurcated, limited.  
6 What are they scared of? I mean, what are we going to ask  
7 Mr. Cuban? I promise you we are not going to ask for his  
8 deposition again. I can put that on the record. No matter  
9 what we do -- and I am not saying we are going to do an amended  
10 complaint. Judge Altman just gave us until February 24th if we  
11 want to. But we will make the assurance that we will not  
12 depose Mr. Cuban after this February 2nd date. We have one  
13 shot at him under the federal rules, and we will use all our  
14 time.

15 THE COURT: All right. I hear both parties.

16 While I understand, Mr. Wissner-Gross, your --

17 MR. KNIGHT: Your Honor --

18 THE COURT: -- argument about jurisdiction,  
19 jurisdiction is much larger than just presence, and we all know  
20 that. At this point jurisdiction has become a difficult and  
21 tricky question that relies upon a lot more than just physical  
22 presence.

23 My concern is any limitation to jurisdiction is going  
24 to be an invitation for more disputes for both sides. It is  
25 going to be a lot more efficient if you simply go forward with

1 your deposition.

2 I understand your argument that Judge Altman has given  
3 me some discretion in that area, and that is why I am certainly  
4 willing to hear your arguments from both sides on the issue of  
5 bifurcation, but it doesn't seem to be a practical answer in  
6 this type of case.

7 MR. WISSNER-GROSS: Your Honor, if I could give it  
8 another shot, just briefly.

9 THE COURT: A motion for reconsideration. OK.

10 MR. WISSNER-GROSS: The reality is that they are  
11 claiming targeting of Florida. It is a false premise. If  
12 there was targeting of Florida, we would have produced  
13 documents that show that. There was a single press conference  
14 in Dallas, entirely in Dallas, on January 27th -- excuse me, on  
15 October 27, 2021.

16 The way this is -- I am not taking the position that  
17 if they think that there are documents that give a basis for an  
18 argument of targeting Florida they couldn't ask questions about  
19 that. The practical solution is, if issues come up at  
20 depositions, your Honor has been very accommodating to us. I  
21 don't think it will happen. I think this is a case where  
22 limiting the subject to jurisdiction is actually quite easy.

23 MR. BEST: Even if that's a relevant question to ask  
24 in jurisdictional discovery, your Honor, and if plaintiffs had  
25 taken the opportunity to give to us search terms for us to look

1 for the documents that they are now speaking that are so  
2 important to their jurisdictional discovery demands, we would  
3 have looked for them. They did not. They refused to give us  
4 any search terms. Today is the first day we have ever heard of  
5 their interest in this information, which we will provide to  
6 them either if anything exists, which it does not, or a  
7 representation that no documents exist on these points, we are  
8 happy to give that to them.

9 MR. WISSNER-GROSS: We are happy to prioritize on the  
10 rolling production all documents in connection with this press  
11 conference, that Mr. Moskowitz and Mr. Boies incorrectly claim  
12 was in any respect targeting Florida. We are happy to provide  
13 that on a priority basis.

14 I said that the discovery on a rolling production is  
15 going to show, frankly, the solicitation of Voyager of the Mavs  
16 beginning in August of 2021 to become a sponsor of the Mavs.  
17 It will show the events in connection with the press  
18 conference, and then after that, frankly, for Mr. Cuban, except  
19 getting very limited updates, there is no presence or contact  
20 with Florida. It is not very complicated.

21 THE COURT: OK. So, Mr. Wissner-Gross, Mr. Best, the  
22 fact that there could be this much discussion about  
23 jurisdiction already tells me that this is not a clear issue,  
24 and in this type of case where there's national marketing of a  
25 product, it is a lot more complicated than simple physical

1 presence.

2 So I think what we will do is I am going to deny that  
3 request to bifurcate the discovery for the same reasons that  
4 Judge Altman does, and we will just go forward with discovery  
5 in this case so that we can work efficiently.

6 I am glad that Mr. Moskowitz is willing to state at  
7 this juncture, and I think that is a benefit to your client  
8 Mr. Cuban, this will be the deposition for Mr. Cuban. I think  
9 that is certainly going to be more efficient from Mr. Cuban's  
10 point of view.

11 Just to be absolutely clear on my ruling, no  
12 bifurcated discovery. Let's move forward with discovery on  
13 both sides, both plaintiff and defendant.

14 MR. BEST: I understand your Honor's ruling. I want  
15 to state for the record here that we have made it clear that  
16 the plaintiffs don't have standing, the Florida-based  
17 plaintiffs don't have standing in this case, and that unlike a  
18 situation where leave to amend can be made, and indeed that  
19 Judge Altman did make a ruling that he would consider leave to  
20 amend, he never did it with an understanding that at present  
21 that the Florida-based plaintiffs have no standing.

22 So we are in an entirely different universe here of  
23 judicial consideration of leave to amend when the argument is  
24 at present none of these Florida-based plaintiffs have standing  
25 to be in this case, and, therefore, if there is no

1 Florida-based plaintiff that has standing, then this case  
2 doesn't have standing. I just wanted to say that for the  
3 record and for your Honor's understanding.

4 Thank you.

5 THE COURT: OK. Thank you.

6 So we have ruled on that first issue, that issue with  
7 regard to the depositions. Let's talk about the plaintiffs'  
8 discovery.

9 The depositions have been set for the plaintiff  
10 representatives?

11 MR. WISSNER-GROSS: No. Your Honor, if I could --

12 THE COURT: Yes.

13 MR. WISSNER-GROSS: -- if I could come back to the  
14 PowerPoint. I will try to go through this quickly to give you  
15 context.

16 THE COURT: You want in-person depositions. OK.

17 MR. WISSNER-GROSS: Yes.

18 So, first of all, your Honor agreed with us on  
19 December 20th we should have their depositions in Florida. We  
20 wanted to have them in Miami. Obviously, the general rule is  
21 plaintiffs should make themselves available for deposition in  
22 this district. We think the discovery we have gotten so far  
23 has actually reinforced the absolute critical nature of doing  
24 in-person depositions.

25 Now, just briefly, as on this slide, each of the

1 plaintiffs, and it is the same generic allegation for each  
2 plaintiff, and I am focusing on the Florida plaintiffs in  
3 paragraphs 7 to 9 of the amended complaint, they all claim that  
4 they acted in reliance on Mr. Cuban and the Mavericks in  
5 opening their accounts, in funding their accounts, in trading  
6 their accounts. So the issue of reliance is front and center  
7 in the allegations of the complaint.

8 The three Florida plaintiffs also in the ill, I guess  
9 it was ill-suited, unsuccessful early effort to certify a  
10 class, they each filed declarations, sworn declarations, that  
11 are summarized below, containing the same generic allegation  
12 that they somehow were relying on Mr. Cuban and the Mavs in  
13 opening up accounts at Voyager.

14 We have gotten document discovery from Voyager. We  
15 served a subpoena on them. We made that discovery available.

16 Actually, before I even get this, I want to confirm  
17 that there is some confidential information I do want to share  
18 that came from Voyager. I want to make sure there is no one on  
19 the call other than attorneys and court personnel.

20 Can we just confirm that first?

21 THE COURT: Let me see if I can go back to full view  
22 and see who is here.

23 MR. BOIES: We certainly don't want -- this is David  
24 Boies. There is certainly no one with me other than counsel.

25 MR. WISSNER-GROSS: Right. I'm assuming there are no

1 reporters, etc., participating, your Honor.

2 THE COURT: I can only see six people on my screen.

3 Let me ask my courtroom deputy.

4 MR. WISSNER-GROSS: John, can we go to the unredacted  
5 version.

6 THE COURT: There are 28 people on this.

7 A VOICE: Yes. I'll switch now.

8 THE COURT: So there may be a reporter here. Let's  
9 see who is here present.

10 MR. WISSNER-GROSS: Let's see if anyone identifies  
11 themselves who may be a reporter. Anyone other than counsel or  
12 court personnel, if they can identify themselves, and if they  
13 are on the call we ask that they drop off.

14 THE COURT: I see someone named Dan Kerns. Who is  
15 that?

16 MR. WISSNER-GROSS: He is one of my colleagues.

17 THE COURT: Jessica Meyers.

18 MR. WISSNER-GROSS: Colleague.

19 THE COURT: OK.

20 MR. MOSKOWITZ: Sig, I am not aware of anybody else.

21 THE COURT: Someone just left. OK.

22 MR. WISSNER-GROSS: John, why don't you put it back  
23 on. I think this will be helpful for your Honor to understand  
24 what we are talking about.

25 So this is what we talked to you about on December

1 20th. We got documents from Voyager that confirm that for  
2 everyone in red, nine of the 12 plaintiffs opened their  
3 accounts and made the first deposits months, if not longer,  
4 prior to the October 27, 2021 press conference.

5 So they allege reliance on Mr. Cuban and the Mavs.

6 We will come to Mr. Robertson in a moment, who alleges  
7 that he opened his account based on the endorsement of  
8 Mr. Cuban of Voyager before he opened this account in May of  
9 2021, when in fact the first statement about Voyager didn't  
10 occur until October.

11 So per the comment of Mr. Best, nine of the 12 are  
12 out. They lied, frankly, in the complaint about having relied  
13 on the Mavs and Mr. Cuban to open their account. But then we  
14 have Rachel Gold and Sanford Gold, two Florida plaintiffs who  
15 we will come to in a moment.

16 Let's go to the next page, next slide.

17 So this is something. We are talking about the lead  
18 plaintiff Mr. Robertson. This is why in-person deposition is  
19 so critical. He states in the complaint, and they quote from  
20 him in paragraph 67, in the summer of '21 he claims that he saw  
21 Mark, referring to Mr. Cuban, promoting Dogecoin and then  
22 Voyager and thought he is a sound investor. "So I downloaded  
23 the app and began to play around with a very small amount of  
24 money in June 2021."

25 Why is that a fabrication? Well, Mr. Cuban didn't

1 announce his involvement or the Mavs involvement with Voyager  
2 until October 2021 and Voyager first approached the Mavs in  
3 August of 2021. False statement number one.

4 Number two, which we found out from Voyager, not from  
5 Mr. Robertson, is that he had actually deposited \$30,000  
6 between June and October into his account. So heavy investment  
7 by him. Well, prior to the initial and only press conference  
8 involving Voyager.

9 Let's go to the next slide.

10 THE COURT: So this is all very good evidence, and I  
11 think this is evidence, obviously, you are going to provide to  
12 the court in deciding the motion, but how is this relevant to  
13 the discovery dispute?

14 MR. WISSNER-GROSS: We wanted Mr. Robertson to be  
15 deposed in person in Miami. We noticed his deposition for  
16 December 22nd. What was his response? He disappeared to  
17 Illinois, they claim, unspecified hand surgery in the middle of  
18 January. They said, well, we could make him available in Miami  
19 sometime in February.

20 We want him next week, frankly. We have asked for  
21 documentation of this purported hand surgery, which they never  
22 provided.

23 Bear with me, your Honor. This, I think, will just  
24 explain a little bit further.

25 Here is what we found with Mr. Robertson. In

1 September of 2021, he filed, under penalty of perjury, in two  
2 state court cases, where he is proceeding *pro se*, seeking to be  
3 relieved of having to make filing fees and he claims that he  
4 has 130, 40 dollars of assets and no other assets. \$120 in  
5 bank accounts, no other assets. We found from Voyager, not  
6 from him, that he had \$30,000 of assets in his Voyager account.  
7 Doesn't disclose it.

8 This goes to the document production that we have  
9 gotten from him. He is claiming in his application to other  
10 courts in September that he's been on disability since 2009,  
11 has no income, and then, mysteriously, a year after he opens  
12 his account, which he opened before Mr. Cuban even announced  
13 anything about Voyager, he puts almost \$200,000 in April to  
14 June, 2022 into his Voyager account.

15 We don't know if it is his money, someone else's  
16 money. We have no idea. This is illustrative of the problem  
17 we are having with the plaintiffs, who clearly in the complaint  
18 allege they relied on Mr. Cuban to open the account. That's  
19 false. We don't know if it's their money, someone else's  
20 money, where it came from, whether they have other crypto  
21 accounts, whether they have other advisors. None of this has  
22 been given to us.

23 So Mr. Robertson, we want his deposition next week in  
24 Miami. We understand why he fled the jurisdiction. This is  
25 just based on our own personal investigation, not based on

1 anything that he's been very candid about sharing with us. So  
2 we haven't gotten all his responsive documents. They should  
3 have been produced in December.

4 Then Mr. Moskowitz has made a variety of objections,  
5 which we think are meritless, like he won't give us information  
6 about any other crypto accounts. Well, what we understand  
7 about crypto is you sort of need that information to find out  
8 if while he is trading in this account, he is trading in other  
9 accounts. Or we haven't gotten any information on what's  
10 called a wallet, which would give us information as to all  
11 their crypto. We haven't gotten this for any of them.

12 So that's Mr. Robertson. That's emblematic of all the  
13 plaintiffs. We had submitted, your Honor, a letter that we had  
14 written to Mr. Moskowitz, including a chart, showing the  
15 deficiencies of all the plaintiffs' production. He raced to  
16 give us a few more documents last night, but all these issues  
17 are still in play.

18 From our perspective there has been complete  
19 noncompliance, complete noncompliance with the production order  
20 you directed where he was supposed to produce all of these  
21 documents. He's given us floating dates that we can depose  
22 Mr. Robertson and if we want to come to Illinois. That's not  
23 acceptable.

24 THE COURT: Right.

25 MR. WISSNER-GROSS: Let me go to the next one.

1                   MR. MOSKOWITZ: Can we respond? We have been going  
2 for about 20 minutes on this motion to dismiss hearing.

3                   MR. WISSNER-GROSS: No, no. Let me finish. I will  
4 finish the other two.

5                   THE COURT: Excuse me.

6                   MR. MOSKOWITZ: Try not to say in the jurisdiction.

7                   THE COURT: Excuse me. Right now, Mr. Moskowitz, I am  
8 just trying to hear about the depositions of the plaintiffs.  
9 So I will give the defendants an opportunity to make their  
10 presentation and then I will get to you, Mr. Moskowitz, so I  
11 can hear what you have to say.

12                  MR. WISSNER-GROSS: Thank you, your Honor.

13                  Sanford Gold. We can be quick on Sanford Gold. His  
14 daughter Rachel Gold is the third plaintiff. Now, both of them  
15 claim to have opened their accounts months after the press  
16 conference. So query whether there was any reliance at all  
17 when they claim they relied on it when they opened it months  
18 later.

19                  By the way, none of these three plaintiffs got that  
20 \$100 bonus that someone who opened, from the press conference,  
21 to open it, etc.

22                  THE COURT: Let's stay focused on deposing these  
23 individuals.

24                  MR. WISSNER-GROSS: So we need to depose him in  
25 person.

1 THE COURT: OK.

2 MR. WISSNER-GROSS: A perfect example. We found out  
3 from our investigation that Mr. Gold has been convicted three  
4 times over three decades for major financial fraud. He's  
5 served serious jail time. Not only financial fraud, he's been  
6 involved with telemarketing, boiler room scams. He's been  
7 involved -- he was required in 2006, for one of his criminal  
8 enterprises, to pay restitution of \$18 million.

9 Go to the next page.

10 THE COURT: So you are concerned about his veracity  
11 and you feel like you should --

12 MR. WISSNER-GROSS: I think we have a little bit of  
13 concern about veracity.

14 THE COURT: Got it.

15 MR. WISSNER-GROSS: So he is a three-time convict  
16 involved with schemes to embezzle consumers. We need to depose  
17 this person in person in Miami. Frankly, he could be directed  
18 to be deposed next week. There is no reason why not. We  
19 should be able to do that.

20 Let's go to his daughter Rachel Gold.

21 This is one where I will borrow a phrase from my  
22 friend Mr. Moskowitz. We were stunned, we were flabbergasted  
23 to find out that, from an email on December 30th from  
24 Mr. Moskowitz, that she didn't even open her account. In fact,  
25 what he has claimed to us is it is her husband, Eric Rares, who

1       opened the account. According to Mr. Moskowitz,  
2 notwithstanding the representations to the contrary in the  
3 complaint, she didn't view the press conference. Somehow  
4 Mr. Rares allegedly had seen a copy of it.

5           So by his own admission, and this goes to Mr. Best's  
6 standing point, we have Mr. Moskowitz sort of conceding that  
7 one of his Florida plaintiffs didn't rely on Mr. Cuban. She  
8 actually relied on her husband for his investment decisions.

9           We have done our investigation, but we have no  
10 documents, not adequate documents, in terms of trading history.

11           Now, they have said that she recently gave birth to a  
12 second child.

13           Go back, John.

14           Can we depose her at her house? She needs to nurse.  
15 We have offered to have one of my colleagues, Ms. Wolkinson is  
16 prepared to go to her house.

17           THE COURT: Her house is here in the Southern District  
18 of Florida?

19           MR. WISSNER-GROSS: In Coral Springs.

20           THE COURT: Coral Springs. OK.

21           MR. WISSNER-GROSS: By the way, we think that Sanford  
22 Gold lives there too. I'm told it is less than an hour to  
23 Miami. So no reason why Mr. Sanford Gold can't drive that one  
24 hour down to Miami to be deposed in our local counsel's office.

25           We are prepared to work with her. Alternatively, we

1 could do it at a local office. Our local counsel has an office  
2 in Fort Lauderdale, probably half an hour away. We are  
3 prepared to depose her at her house. Let her take the breaks  
4 she needs. Women only. We are prepared to do that.

5 Her husband, who they have offered up to be deposed,  
6 he should be deposed in Miami. If he is the one who is the  
7 real actor here who made all the decisions -- I would like to  
8 accommodate her, but it just seems too complicated, with two  
9 kids in the background, to depose the husband also. I think he  
10 should make that one-hour trip to Miami.

11 So we need Mr. Robertson in Miami. We want him next  
12 week. We want Mr. Gold in Miami. He can come next week.  
13 Mr. Rares, we are willing to do him like the day after  
14 Ms. Gold, but he should come to Miami.

15 Yes, have they given us proposed dates. Well, it is  
16 sometime later in January and go to Illinois for Mr. Robertson  
17 and depose him on the 26th or maybe in February. We think  
18 these are perjured, bogus claims that all three of them have  
19 asserted. If they are gone, the case goes.

20 THE COURT: OK.

21 MR. WISSNER-GROSS: So we understand why Mr. Moskowitz  
22 is scurrying to try to bring in new people.

23 Mr. Moskowitz also offered me --

24 THE COURT: So let me hear the response from  
25 Mr. Moskowitz. Thank you, Mr. Wissner-Gross.

1 MR. WISSNER-GROSS: All right.

2 THE COURT: So, Mr. Moskowitz, your plaintiffs have  
3 filed an action here in Miami. Why can't they be deposed here  
4 in Miami?

5 MR. MOSKOWITZ: They absolutely can, your Honor. I  
6 mean, this is just incredible to hear these personal attacks on  
7 these investors, that they fled the jurisdiction. I mean, just  
8 complete lies, that they do all these horrible things.

9 THE COURT: So what are the dates?

10 MR. MOSKOWITZ: What we said, right after your Honor  
11 ruled, we wrote them immediately after, here is a date for  
12 every one of the plaintiff representatives, because they wanted  
13 dates for those depositions. We gave them. We said we also  
14 may add two additional ones. You know we can add until almost  
15 trial for class reps. So here's two more.

16 They say, we don't want to hear about those two  
17 others. We don't even want to hear about them. We're like,  
18 OK, we're giving you an opportunity to depose them because we  
19 want to be courteous and we may amend them. So there are four  
20 people from Miami and we're making them available. So they  
21 have a date for every deposition of every class rep.

22 The question for two was -- one went for hand surgery.  
23 He's not fleeing the jurisdiction. Your Honor, I know that you  
24 appreciate courteousness between counsel.

25 Please don't say he fled the jurisdiction, Sig. I

1 mean, that is just not right. It is just defamation.

2 THE COURT: Mr. Moskowitz, when can he be available in  
3 Miami for deposition, Mr. Robertson?

4 MR. MOSKOWITZ: He needed two weeks to recuperate  
5 where he was. So in three-and-a-half weeks, when he gets back,  
6 he can be deposed here. That's all we said.

7 THE COURT: Did you give those dates? Have you given  
8 those dates to opposing counsel?

9 MR. MOSKOWITZ: We will give them those dates. All  
10 they keep saying is these guys are all defamatory and they're  
11 all crooks and they're dropping their case. They're not  
12 dropping their case.

13 The people that need to be deposed, we gave them  
14 dates. One woman is pregnant and she is breastfeeding. She  
15 does not want to go to Rachel's office. Rachel said, well, I  
16 have a lot of people who have been breastfeeding who come to my  
17 office. She doesn't feel comfortable breastfeeding her baby  
18 during a deposition. That was it, your Honor. We don't think  
19 that was so ridiculous to say a woman who is breastfeeding  
20 would like to do it by Zoom.

21 THE COURT: OK.

22 MR. MOSKOWITZ: What is the emergency? There is no  
23 allegation she is lying.

24 THE COURT: I think they're willing to come to her  
25 home. So that shouldn't be a problem, correct?

1 MR. MOSKOWITZ: We can do it at her home.

2 THE COURT: OK.

3 MR. MOSKOWITZ: So we will make her available.

4 THE COURT: So do we have dates for those?

5 MR. MOSKOWITZ: We will send them dates in the next 30  
6 days where they can depose Mr. Robertson and they can depose  
7 Mr. Gold. We gave them dates for all of the others in January,  
8 as your Honor ordered. There is no dispute here that we didn't  
9 follow exactly what you said. Give them dates in January. We  
10 did. And for two of the seven we said we want to do it by  
11 Zoom. That was it. There is no fleeing the jurisdiction.

12 If they want to wait for Mr. Robertson's hand from  
13 surgery for another two weeks, great. We told them that's  
14 fine. If they want to now to go to her house and do it in a  
15 way least disturbing to someone who is feeding her baby, great,  
16 we will do that too.

17 THE COURT: OK.

18 MR. MOSKOWITZ: So that's all. This isn't a motion to  
19 dismiss hearing where we have to support all these horrible  
20 attack-the-victim allegations. We have got hundreds of  
21 clients.

22 Again, what we said before, your Honor, there is no  
23 reliance in our claim. I don't know how many times we can tell  
24 them that, but if these are unregistered --

25 THE COURT: Well, Mr. Moskowitz, I'm reading the

1 complaint and the complaint does allege reliance.

2 MR. MOSKOWITZ: These plaintiffs do say that they  
3 relied on them.

4 THE COURT: OK.

5 MR. MOSKOWITZ: I'm telling you to prove the claim  
6 that we are certifying it is not necessary. But they can ask  
7 our clients anything they want in a full deposition. They have  
8 their statements from the motion for class cert.

9 THE COURT: OK.

10 MR. MOSKOWITZ: They have everything about their  
11 Voyager account. They have the subpoena from Voyager about  
12 their account. What are they saying they don't have? Today is  
13 discovery. It is not to try to show --

14 THE COURT: Well, I am glad that we resolved that.

15 Mr. Wissner-Gross.

16 MR. WISSNER-GROSS: Your Honor, two things. One, I  
17 think we need to -- I think we get a feel for sort of one side  
18 of Mr. Moskowitz. I think we need to lock in the dates today,  
19 frankly. I think we need -- I haven't heard anything to  
20 suggest that Mr. Gold or Mr. Robertson can't be deposed next  
21 week, certainly for Mr. Gold. There is no reason why he can't  
22 come to Miami and be deposed next week.

23 As to Mr. Robertson, I haven't gotten any -- I still  
24 think he fled the jurisdiction because he knew we wanted to  
25 depose him on the 22nd. We have shown you more than enough

1 evidence to raise questions on his credibility.

2 MR. BEST: Irrespective of that, what is wrong with  
3 next week is the question.

4 THE COURT: OK. So today is January 6th. Mr. Gold  
5 lives here in South Florida and Mr. Rares is here in South  
6 Florida.

7 What dates are they available next week,  
8 Mr. Moskowitz?

9 MR. MOSKOWITZ: We will have to check with them, your  
10 Honor. We asked for them for dates in January and we gave them  
11 dates in January.

12 THE COURT: Well, what were those dates that were  
13 given? What were the dates?

14 MR. MOSKOWITZ: We gave them an email with dates for  
15 every single plaintiff in January. Now if they want to do the  
16 one who is breastfeeding in Miami, they can do it at her house.  
17 Sure, we will try to work on a date.

18 MR. BOIES: We have offered to do that at her home,  
19 your Honor.

20 THE COURT: Mr. Wissner-Gross, do you have the dates  
21 for these four individuals within the month of January? What  
22 do you have?

23 MR. WISSNER-GROSS: Well, I'm looking to see. I  
24 thought they had proposed late January.

25 MR. BUSHMAN: January 23rd for Rachel Gold, Judge.

1 THE COURT: OK.

2 MR. BUSHMAN: January 24th for Sanford Gold.

3 THE COURT: OK.

4 MR. WISSNER-GROSS: Our point is --

5 MR. BUSHMAN: Pierce Robertson is not in the  
6 jurisdiction.

7 THE COURT: And Eric Rares.

8 MR. BUSHMAN: The 26th. That's it.

9 MR. WISSNER-GROSS: We'd like your Honor to direct  
10 Mr. Robertson return and be deposed next week. We think there  
11 is strong evidence, strong evidence, that he filed a perjured  
12 declaration.

13 MR. BEST: We could go to Chicago, too.

14 THE COURT: As I understand it, Mr. Moskowitz is  
15 saying two weeks and he is available. So he is available the  
16 week of the 23rd, correct, Mr. Moskowitz?

17 MR. MOSKOWITZ: Yes.

18 MR. WISSNER-GROSS: Who is available the 23rd, your  
19 Honor?

20 THE COURT: Mr. Robertson will be in Miami on the week  
21 of the 23rd.

22 MR. BUSHMAN: No, your Honor. This is Howard Bushman,  
23 from the Moskowitz law firm. Good morning.

24 Mr. Robertson is having his surgery on January 17.

25 THE COURT: Oh, he hasn't even had the surgery yet.

MR. BUSHMAN: He is in Illinois doing preop appointments and things like that. But he is having the surgery on January 17th, and we offered to have his deposition the week after in Illinois or he said he needed two weeks to recover and then he could come back to Miami to have his deposition taken, but Mr. Gross wanted all depositions completed before January 13th. So the impasse occurred.

THE COURT: OK. He hasn't had the surgery yet, so he could be in Miami next week.

MR. WISSNER-GROSS: That is what we are suggesting, your Honor.

MR. BUSHMAN: I don't know the answer to that, your Honor. I know he had doctor's appointments prior, but we could check with him.

THE COURT: Otherwise, if it wasn't next week -- I'm sorry. Mr. Boies.

MR. BOIES: I'm sorry. Go ahead, your Honor. You probably had a solution.

THE COURT: So if he is not available next week, then you're saying he is available the week of the 30th. Is that what I understand, Mr. Bushman?

MR. BUSHMAN: We had offered him in Illinois after his surgery or two weeks, he needed two weeks to recover. I have not checked with him to see after that two-week period when he could come to Miami, but I am sure it is short order after

1 that.

2 MR. BOIES: He can be available, your Honor, either  
3 the week of the 23rd or 24th in Chicago or the week of the 31st  
4 in Miami.

5 MR. WISSNER-GROSS: Your Honor, we are willing --

6 MR. BOIES: If I could just finish.

7 What we are talking about is whether these people are  
8 deposed the week of the 23rd of January and the 30th, in one  
9 case the 30th of January, or whether they are deposed the week  
10 of -- I guess next week is the week of the 12th or something.

11 THE COURT: The 9th.

12 MR. BOIES: The 9th, week of the 9th.

13 I would respectfully suggest that given the dates that  
14 we have agreed to that accommodate the defendants' depositions,  
15 which go out much longer than this, it is not an unreasonable  
16 accommodation -- we are giving them dates in January -- it is  
17 not an unreasonable accommodation to have these for the weeks  
18 that we have offered them dates for.

19 We will make them available. They can be deposed. If  
20 there are any credibility issues, they will be fought out at  
21 the deposition. I don't think that there is any need to, in  
22 effect, just make it uncomfortable for these people to rush  
23 them through when we are not doing that with anybody else.

24 MR. BEST: The whole case is being rushed through,  
25 your Honor. The whole case is being rushed through.

1                   There is literally no reason why, that we know of, why  
2 Mr. Robertson can't make himself available this upcoming week,  
3 and we'll go to Chicago.

4                   THE COURT: So, Mr. Best -- oh, you will go to Chicago  
5 now?

6                   MR. BEST: Yes. We will be happy to go to Chicago  
7 next week.

8                   MR. BOIES: It should be a place --

9                   THE COURT: I'm sorry. Wait. OK. Slow down.

10                  A few minutes ago I heard he could only be deposed in  
11 Miami, but now you're willing to go to Illinois. I just want  
12 to be clear.

13                  MR. WISSNER-GROSS: Our preference is Miami. We want  
14 to take him next week. We don't believe any of the excuses  
15 they're making, but we're prepared to go to Chicago.

16                  THE COURT: OK.

17                  MR. WISSNER-GROSS: We will pick the place and we will  
18 pick the date.

19                  THE COURT: Well, you can't pick the date if he has a  
20 doctor's appointment. You will try to work with him on the  
21 dates.

22                  MR. WISSNER-GROSS: Yes, your Honor. We also would  
23 like --

24                  THE COURT: Is that, Mr. Boies -- hold on --  
25 Mr. Boies, is he available in Chicago next week? Let's start

1 with that.

2 MR. BOIES: Your Honor, I think we ought to be able to  
3 make him available in Chicago next week. I haven't personally  
4 spoken to him. Mr. Bushman has. But if they want to fly to  
5 Chicago to take his deposition two weeks before he is going to  
6 be in Miami, fine.

7 THE COURT: That's fine. Right.

8 MR. BOIES: I frankly wouldn't want to go to Chicago  
9 this time of year, but if that is what they want to do, we will  
10 try to find --

11 THE COURT: I'm glad we resolved that.

12 MR. BOIES: We'll find a date next week. We'll find a  
13 date next week.

14 THE COURT: So we have Mr. Robertson next week, and  
15 then the week of the 23rd will be Mr. Sanford Gold, Ms. Rachel  
16 Gold, and what about Eric Rares?

17 MR. WISSNER-GROSS: Your Honor, if we could, we'd like  
18 to depose Sanford Gold and Rachel Gold's husband next week. We  
19 can do that in Miami. There is no issue with that. We will do  
20 it in Miami. They are less than an hour away.

21 THE COURT: So the issue with Ms. Rachel Gold is  
22 you're saying you will do it at her home in Coral Springs.

23 MR. WISSNER-GROSS: Yes, we'll do it separately. We  
24 will do that at her home, absolutely. We are prepared to do  
25 that.

THE COURT: The question is whether she is available next week at her home, the 9th.

MR. WISSNER-GROSS: No. It is fine. We will accommodate. If it is the 23rd is what's proposed -- my colleague Rachel Wolkinson will be taking that deposition. I leave it to her to speak.

THE COURT: OK.

MR. WISSNER-GROSS: The 23rd is proposed. If that is the date -- Rachel, if you could weigh in -- we can live with it.

MS. WOLKINSON: I'm certainly available.

MR. BOIES: So we've got Rachel Gold for the 23rd at her home.

THE COURT: Rachel Gold for the 23rd at her home.

Now you're talking about Sanford Gold. That's not her husband, that's the father, correct?

MR. WISSNER-GROSS: That's the father.

THE COURT: The date given was January 24th, correct?

MR. WISSNER-GROSS: Right. We'd like it next week.

What we'd also like is we'd like an order directing that the plaintiffs produce all remaining documents that we have requested, which they really haven't done at all, and a date certain from your Honor to complete that. So if they're being deposed next week, we want all the documents at least 24 hours prior to deposition, certification, and --

THE COURT: Right. So that will be the next issue we will talk about, the documents. That will be the next issue. OK.

MR. BEST: On the 24th, your Honor, as you may know, and certainly plaintiffs know, they scheduled Mr. Ehrlich's deposition on the 25th in Connecticut.

THE COURT: Mr. Ehrlich.

MR. BEST: That is one reason why it would make sense to have Mr. Gold's deposition next week.

THE COURT: I see. OK. Now I understand.

MR. BUSHMAN: Your Honor, this is Howard Bushman again. We went through with the plaintiffs on the dates that they were available. These were the dates that we were able to get availability.

The defendants have four lawyers arguing in this hearing. They can have one lawyer cover Mr. Ehrlich's deposition and one lawyer take a deposition on January 24th of Mr. Gold, who has offered to either come to Miami or what we did offer is to allow, because Rachel Gold is married to Eric Rares and Sanford Gold is the father, to have all the depositions at Ms. Gold's house. I don't know how long the defendants have proposed to take the deposition, whether they need more than a few hours. We could double track them in one day and then do another one the next day to keep the setup all set up. But the 23rd and 24th were the dates that they were

1 available.

2 Respectfully, I ask that we keep those dates and also  
3 allow us to complete our production of documents, which I know  
4 your Honor will get to next and we can talk about that next.

5 THE COURT: OK.

6 MR. WISSNER-GROSS: We think that's wrong, your Honor.  
7 We think for the reasons we have stated, and I have thought a  
8 lot about it deeply, I think it is just not practical to depose  
9 Sanford in his daughter's home with two kids under the age of 3  
10 running around. The correct approach, it is less than an hour  
11 to go to Miami. He is the plaintiff. He chose to become a  
12 plaintiff. It is not inconvenient for him to come to Miami.  
13 He actually might enjoy the break coming to Miami. And we  
14 think we're entitled to depose him in person at our local  
15 counsel's office.

16 The same with Eric Rares. We didn't know until  
17 recently that Eric was the one who made all the decisions in  
18 the account. They have offered him as a deponent. We will  
19 take the offer. He also should be deposed in Miami. We can do  
20 it next week.

21 THE COURT: And I don't think there's --

22 MR. BUSHMAN: Responding to Mr. Gross' statement about  
23 Eric Rares, it is completely not true and false, but  
24 irrespective, we did make him available for deposition along  
25 with Ms. Gold on the same day. They could double track those

1 depositions and do one in the morning and one in the afternoon  
2 after lunch, and we offered to prepare lunch and serve it to  
3 them.

4 THE COURT: OK. I can understand, Mr. Bushman -- I  
5 hear you -- but I can understand why they would want to have  
6 the deposition in a law office or in a conference room where  
7 there is more control over the environment. So it does make  
8 sense. The only problem is the date.

9 So you are accommodating Rachel Gold at home. Sanford  
10 Gold and Eric Rares, the question is what dates, and  
11 accommodating them in Miami in a conference room environment  
12 makes sense. So let's get some dates for that that will work  
13 with defendants' schedule, defendants' attorneys' schedule.

14 MR. WISSNER-GROSS: Our proposal would be that they be  
15 deposed towards the end of next week, simply because that will  
16 give more time for the plaintiffs to complete their document  
17 production.

18 THE COURT: OK.

19 MR. WISSNER-GROSS: We would propose, I think, the  
20 12th or the 13th. We were agnostic as to which order it goes  
21 in.

22 THE COURT: Well, let's see if that is possible.

23 MR. WISSNER-GROSS: We can do Sanford or Eric first  
24 and --

25 THE COURT: The next thing we should talk about then

1 is the documents and what's missing with the plaintiffs'  
2 document production.

3 MR. WISSNER-GROSS: Your Honor, in your view -- again,  
4 we don't care whether it is Eric or Sanford on the 12th and  
5 13th, but we would want one on the 12th and one on the 13th.  
6 We don't know yet how long each will be.

7 MR. BUSHMAN: Your Honor, this is Howard Bushman. I  
8 don't even know if they are available. Mr. Rares has a job. I  
9 don't know if Mr. Gold is available. We gave them availability  
10 dates. I will check.

11 If your Honor wants, we could have Sanford Gold on the  
12 24th, the date that he said he was available in Miami live, and  
13 I will check if Mr. Rares is available maybe on the 25th or  
14 possibly on the same day, and they can both come to Miami and  
15 we could do two depositions in the voluminous conference rooms  
16 that the defendant has, but I don't want the defendant to be  
17 able to just dictate, hey, we are going to do it on X day  
18 because that is the day they want to do the deposition. It has  
19 to be an availability.

20 We wanted to take Mark Cuban's deposition last month,  
21 but he is not available. I just come out and say I want it  
22 next week and your Honor is just going to say, oh, OK, let's do  
23 it next week. This is not the way depositions work.

24 THE COURT: No, that is correct. Obviously you have  
25 to check with their schedules to make sure that is going to be

1 appropriate. I'm sure you're willing to check.

2 MR. BUSHMAN: We will, your Honor.

3 THE COURT: If it can happen, it can. If it cannot,  
4 then we will have to make different accommodations. Correct,  
5 Mr. Wissner-Gross?

6 MR. WISSNER-GROSS: I'm sorry?

7 THE COURT: If he can, I hear counsel saying he will  
8 contact his client and see if the 12th or the 13th is  
9 appropriate for them. If it is not, then it is not. The dates  
10 that they have given you is the 24th --

11 MR. WISSNER-GROSS: We're not aware, based on  
12 investigation, we're not aware that Mr. Gold is working. He is  
13 in his early 70s. He lives in his daughter's house.

14 THE COURT: He may have appointments.

15 MR. WISSNER-GROSS: We think that -- we haven't heard  
16 any hospitalization issue. We have questions about any  
17 explanations given to us. We think he is available.

18 THE COURT: Well, he may well be. He may well be.

19 Let me switch the topic to discussing now the  
20 documents and let's see what that would require. That may help  
21 us determine whether that deposition could occur the end of  
22 next week or whether another week or so is necessary, because  
23 it sounds to me, Mr. Wissner-Gross, that you want those  
24 documents, you want a complete document production before the  
25 deposition, and that would make sense.

MR. WISSNER-GROSS: We want to know they have produced to us whatever they have.

THE COURT: What they have. So let's talk about that first before we actually nail down these dates, now that we have some options on dates.

MR. WISSNER-GROSS: Right.

THE COURT: Let's talk about that.

MR. BEST: Your Honor, this is Mr. Best. To that point, your Honor, when we are getting into the question of have they produced all that which the plaintiffs have, so you understand, we are in a unique situation that Voyager account information is on an app and is not like document based. You can't get it from a third party. It has to be screenshotted off their app.

We are talking a matter of seconds for the plaintiffs to screenshot basic information about their account, i.e., when they opened it. And when I say screenshot, it takes two buttons on your phone, if it is an iPhone app, or if it is an Android I think it is still two buttons, to screenshot it and save the picture and then send it on.

We have not received any information from the plaintiffs as to when these accounts were opened from the plaintiffs or their trading activity or redemption activity, which is critical to the standing piece.

MR. WISSNER-GROSS: Or to the extent we received any,

1 it is materially incomplete.

2 We did get from Voyager, which Mr. Moskowitz has or we  
3 have made available to him by Voyager, a spreadsheet  
4 summarizing, where Voyager had summarized all of their trading  
5 activity. The case of Ms. Gold's didn't match up. So there  
6 are discrepancies there.

7 If we can go to the -- your Honor, I don't know if you  
8 have handy, there was a January 2nd letter I submitted or was  
9 submitted to the court.

10 THE COURT: I have it.

11 MR. WISSNER-GROSS: That is Exhibit C, a chart  
12 summarizing what we thought were the deficiencies that each  
13 plaintiff, not just the Florida plaintiffs, but all of them.  
14 You have that available, your Honor?

15 THE COURT: Yes, I do.

16 MR. WISSNER-GROSS: So that goes through detailing  
17 what was missing and hadn't been produced, based on our quick  
18 review of what was produced on the 28th.

19 John, I don't think we need to go to that.

20 You have that available?

21 THE COURT: I have it in front of me.

22 MR. WISSNER-GROSS: OK. That's fine.

23 John, we can go back to the PowerPoint.

24 THE COURT: Those are the documents. So let me hear  
25 then from --

MR. WISSNER-GROSS: Let me just tell you at a high level what I think we need.

THE COURT: OK.

MR. WISSNER-GROSS: I will use Mr. Robertson as an example. That is why I refer that he represented in a court proceeding he had no money in September 2021. If this guy is claiming that he relied on Mark Cuban to open his account, although he opened it months before the press conference, we need to have all the information of the source of funding. We think it is very likely that this wasn't even -- we don't know if it is even his money. Some of it was cash that came in, crypto came in. So we need to know the source of funding. We haven't gotten that. It applies to all the plaintiffs.

We need to know if he had other crypto accounts.

Because the way this world operates, we need to have his information, what is called the wallet information, that will show us insight into all other crypto trading. That will be relevant. If one of these plaintiffs was simultaneously trading in another account with particular crypto that they were doing here, that may impact questions of reliance on Mr. Cuban, which we don't think there is.

We don't have the full picture for these people.

Where did the money come from, what the source was for the money coming in, other crypto accounts, did they have other brokerage accounts. We have heard that in the case of Ms. Gold

1       she relied on her husband. We don't know if any of these  
2 other -- now we are talking more broadly of all, both  
3 plaintiffs, we don't know if they had investment advisors. We  
4 don't know any of that.

5               Now in terms of lawsuits, which impact their  
6 credibility, we had to do our own investigation and found out  
7 the prior bankruptcies by Mr. Robertson under a different name,  
8 his 20 arrests, multiple court proceedings. Same thing for  
9 Sanford Gold. There are other plaintiffs in the case who have  
10 very, very serious, at least one has a very, very serious  
11 several-page criminal history. That alone impacts credibility.

12               For now what we are focusing on is we want all the  
13 documents as soon as possible of the Florida plaintiffs so we  
14 can prepare for their depositions. We have gotten some from  
15 them. Mr. Moskowitz has objected to the relevancy of other  
16 crypto accounts, other brokerage accounts, anyone else they  
17 rely on. I don't know whether he is still insisting on that  
18 objection.

19               Other than a claim of privilege, we think we should  
20 get the full years of what they have, and if they don't have  
21 it, just tell us they don't have it reasonably in advance of  
22 their deposition. I have said 24 hours before, but if we  
23 depose them Thursday and Friday, as long as I have all of their  
24 documents, let's say, noon next Wednesday, with a certification  
25 as to the Florida plaintiffs, we don't have anything else other

1 than what we've given you, we can go forward. That's fine.

2 THE COURT: OK. So let me hear from the plaintiffs'  
3 side on that. Who will be addressing that?

4 MR. MOSKOWITZ: Thank you, your Honor. I will speak  
5 first and then Mr. Bushman can add in.

6 We immediately, after your Honor's last ruling,  
7 because that was the first time our plaintiffs' documents were  
8 due. Again, I'm going to talk about for five months we have  
9 been trying to get documents from Mr. Cuban about his account,  
10 etc. We got nothing. But we said to them, we will give you  
11 dates for each of the depositions and we will give you all of  
12 their documents regarding their Voyager account.

13 What did they do? They went to Voyager, because they  
14 are aligned with them, and they were able to get every document  
15 regarding our accounts at Voyager. They also had these  
16 declarations that our clients filed prior, when we moved for  
17 class certification. So anything that relates to anything from  
18 the Voyager account -- did I use the bonus, what did I see of  
19 Mr. Cuban -- all of that will be produced to them, we said,  
20 period. There's no resistance. There is no delay. They just  
21 asked for it. We said, we are producing it all, you will get  
22 everything about their Voyager account. So that was clear.

23 I just need to state one other thing. The only two  
24 depositions that we have been waiting for for three months are  
25 the two Mavericks employees. Your Honor said to Mr. Boies at

1 the last conference, you can get those depositions in January  
2 before the plaintiffs are deposed because you've been waiting  
3 for five months for depositions. So I know we are going to get  
4 to them, but Mr. Mackey and Mr. Tapply, these are the  
5 communications directors at the Mavericks. We don't have a  
6 date for them in January, and that's when Mr. Boies said, your  
7 Honor, we would like to have their dates before we give the  
8 plaintiffs because they just asked for the plaintiffs after  
9 they denied the motion to stay. We have been asking for these  
10 people with personal knowledge for three months. Your Honor  
11 ruled -- I have the quote. You said: Yes, you will give it to  
12 them in January.

13 So I'm happy to give all these plaintiff deposition  
14 dates, but we have been asking for just two depositions of the  
15 Mavericks, Mr. Tapply and Mr. Mackey, because they were  
16 identified as having personal knowledge. We just want the same  
17 standards to apply to them. We want their documents and we  
18 want their depositions in January before these plaintiffs.

19 In terms of our plaintiffs, we're not hiding anything.  
20 Anything about the Voyager account, about what they saw about  
21 Mark Cuban, about what they relied upon, we are going to give it  
22 to them and they can ask any and all questions about it.

23 THE COURT: OK. When will you be producing those  
24 documents?

25 MR. MOSKOWITZ: Howie, you have a better idea.

1 MR. BUSHMAN: Your Honor, there is what the defendants  
2 are telling you they want now and what they asked for in  
3 discovery, right. So when you ask for all documents regarding  
4 all communications regarding Voyager, right, we have to then  
5 search emails, search text messages, which we did. We hired an  
6 eDiscovery vendor to do that, pull all of that information and  
7 put that on a system, which I believe everything has been  
8 uploaded to that system today. There were thousands of hits  
9 for that. So now we have to go through that because if  
10 somebody was, for example, a Star Treck Voyager fan, all of  
11 that will come up. So we are going to go through those  
12 documents.

13                   We should be able to make a full production next week.  
14                   It should be able to go through the documents in short order.

15 MR. BEST: To be clear --

16 MR. BUSHMAN: The real rub that, I think -- I'm sorry.  
17 I was interrupted by Mr. Best again.

18 THE COURT: Mr. Best, I'm listening to Mr. Bushman.

19 || Go ahead.

20 MR. BUSHMAN: The other thing that we did is we also  
21 produced screenshots of the Voyager app, which showed when they  
22 made their initial deposit. I am not 100 percent clear sitting  
23 here today we did that for every plaintiff, but certainly we  
24 will, and we can do that by next week as well. I believe we  
25 have done it for all the Florida reps, absolutely.

1                   I think the real rub goes to the fishing expedition  
2 that defendants want to do as to every plaintiff's financials.  
3 They want to look at other crypto accounts, other banking  
4 institutions and things like that, which we think goes well  
5 beyond anything relevant in this particular case.

6                   I mean, for example, they talk about efficiency as it  
7 relates to Mr. Cuban. What if we wanted every marketing  
8 agreement that Mr. Cuban and the Mavericks ever entered into to  
9 see what kind of due diligence they did on those types of  
10 accounts and then we show that they didn't do any due diligence  
11 here for this Voyager account. It doesn't make sense.

12                  They either looked at Voyager and they made a deposit  
13 in Voyager, it came from their bank account, that's fine. To  
14 go beyond that, what are they looking at in other crypto  
15 accounts, what are they looking at on the Blockchain, what are  
16 they looking at in other investment accounts in other brokerage  
17 firms. All of this spirals into just madness of the relevant  
18 information, when the only thing that matters here is Voyager.

19                  They are going to tell you, Judge, that every  
20 allegation we have and every piece of discovery we have as it  
21 relates to Mr. Cuban has to be Voyager related. They can't  
22 then come back and say, well, we want everything under the sun  
23 regarding every plaintiff's financials, which is what their  
24 discovery requests ask for. That just doesn't make any sense.

25                  Nor have they provided us with any type of case law or

1 cases that show that when you make an allegation of purchasing  
2 an unregistered security that somehow you're entitled to, the  
3 defendant is entitled to get your entire financial background  
4 from a particular plaintiff who filed a case. They haven't  
5 done that.

6 So what I would respectfully suggest is that we  
7 deliver to them all of the Voyager confirmation. If they want  
8 to ask questions at the deposition about where did the money  
9 come from, what did you do with it, and they will answer those  
10 questions because I can't make a relevancy objection at a  
11 deposition, or I can but I can't instruct them not to answer.  
12 If they have further questions and want further documents, they  
13 can seek those.

14 At this stage it is a complete fishing expedition. It  
15 is beyond anything I have ever seen in any case I have ever  
16 done relating to a plaintiffs' discovery, to ask for literally  
17 their entire financial background and history for the temerity  
18 to bring a lawsuit against our client.

19 MR. WISSNER-GROSS: Your Honor, can I briefly respond?

20 THE COURT: So I hear you saying, Mr. Bushman, that  
21 you're willing to produce all documents that would relate to  
22 any of your clients' investments in Voyager.

23 MR. BUSHMAN: Correct.

24 THE COURT: And related to Voyager platform, the  
25 information that they may have received with respect or from

1 Voyager.

2 The personal financial information, are you including  
3 in that, for instance -- I just want to make sure I  
4 understand -- documents relating to any investment accounts  
5 with any brokerage firm person or entity? You're objecting to  
6 that?

7 MR. BUSHMAN: Yes, your Honor.

8 THE COURT: Source of funds. Are you objecting to  
9 that?

10 MR. BUSHMAN: When you do a screenshot, it shows that  
11 the deposit was made from a checking, from their checking  
12 account or whatever bank account it was. So it is in the app.

13 THE COURT: The source of funds is in the app.

14 MR. BUSHMAN: Yes.

15 THE COURT: So you're talking about documents related  
16 to other investments and other investment accounts. Let me  
17 make sure I understand.

18 MR. WISSNER-GROSS: Request --

19 THE COURT: Documents relating to third-party advice  
20 with respect to Voyager. Any objection to that?

21 MR. BUSHMAN: I couldn't hear you. Mr. Gross started  
22 speaking while you were speaking, your Honor, so I couldn't  
23 hear you.

24 MR. WISSNER-GROSS: Apologize.

25 THE COURT: Documents relating to third-party advice

1 with respect to Voyager or other crypto investments.

2 MR. BUSHMAN: No. With respect to Voyager, we will  
3 produce. With respect to other crypto investments, what does  
4 it matter if somebody invested in some other crypto asset and  
5 got advice to invest in that other crypto asset if it doesn't  
6 relate to Voyager. If it relates to Voyager, we will produce  
7 it, including text messages, emails, and, of course, they are  
8 going to sit for a deposition and talk about it.

9 Other investment and other investment firms and  
10 brokerage accounts is completely irrelevant. It is really  
11 harassing --

12 THE COURT: OK.

13 MR. BUSHMAN: -- and par for the course in this case.

14 THE COURT: I just want to make sure we are clear on  
15 all your objections.

16 No prior criminal history or involvement in  
17 litigation. What about that?

18 MR. BUSHMAN: Typically, that would be more of an  
19 interrogatory, but we are pulling the documents that we have  
20 access to and we will produce them.

21 THE COURT: With regard to criminal history and  
22 involvement in other litigation. OK.

23 MR. BUSHMAN: I believe we had an objection, your  
24 Honor, as to temporalness as far as something longer than, say,  
25 10 years ago or 15 years ago, but we will produce what's

1 relevant and what is in our possession --

2 THE COURT: OK.

3 MR. BUSHMAN: -- as best as we can.

4 THE COURT: All right. So it comes down to other  
5 crypto investments and other documents relating to other  
6 investments, but other than that you're willing to produce.

7 MR. BUSHMAN: Yes. Yes, your Honor.

8 I want to make clear, just because the defendants were  
9 able to find information on the internet about our particular  
10 clients as far as their past criminal history or what have you  
11 doesn't mean they have documents in their possession regarding  
12 that particular event that might have occurred 10, 15, 20 years  
13 ago, but we'll search to see if they have actual documents in  
14 their possession. That's why I said it was probably better  
15 suited for an interrogatory, where they would ask you  
16 questions -- have you ever been convicted of a felony over the  
17 last ten years -- and we would answer it as best that we can.

18 THE COURT: OK.

19 MR. BUSHMAN: I can't sit here today saying somebody  
20 has a file about some criminal conviction from a decade ago or  
21 longer.

22 THE COURT: All right. I think I understand you.  
23 Then your ability to, the timing in which you would provide  
24 those documents, what's the holdup? How long will that take?

25 MR. BUSHMAN: There really isn't a holdup, your Honor.

1 It was a situation where we wanted to make sure we made a  
2 thorough production.

3 We had an eDiscovery vendor go in and pull the emails  
4 and pull the text messages and then they upload it to their  
5 software, their Relativity software, and then we are able to  
6 review it and produce it in an orderly fashion. Also so that  
7 the defendants can search and use it in a way that they feel is  
8 necessary, as I've had in every discovery production.

9 We got everything uploaded. We, I believe, are  
10 starting to review it today. By next week we should be able to  
11 produce. By Thursday probably, maybe earlier.

12 THE COURT: Next week Thursday?

13 MR. BUSHMAN: We can try on a rolling basis to produce  
14 documents, and we have made two productions already. Whether  
15 the defendants like to mischaracterize it as scurrying or  
16 whatever, but we are producing as we get and we are producing  
17 more.

18 THE COURT: OK. You believe you will have it all  
19 produced by the end of next week.

20 MR. BUSHMAN: Yes, your Honor.

21 THE COURT: I didn't catch the date. You said the  
22 Thursday?

23 MR. BUSHMAN: I said Thursday, but if you want to give  
24 us until the 13th and then that will give them a week to review  
25 the documents before the depositions start on the 23rd.

1 THE COURT: OK.

2 MR. WISSNER-GROSS: We were hoping to take some  
3 depositions next week, your Honor.

4 THE COURT: I understand.

5 All right. So, Mr. Wissner-Gross, we have had a  
6 thorough discussion now on what they are able to produce, why  
7 they're taking some time, because they need to make sure that  
8 they review all of the documents before they give them to you.  
9 Where are we now?

10 MR. WISSNER-GROSS: Well, I still would like for the  
11 Florida plaintiffs -- I'm happy to prioritize to get the  
12 Florida plaintiffs first in the interest of efficiency. It  
13 sounds like from Mr. Bushman that Thursday was possible. If he  
14 gets it to us by end of business Wednesday, we could still do  
15 depositions on Thursday and Friday.

16 THE COURT: Assuming the individuals are available,  
17 but those were not the dates that they have given you.

18 MR. WISSNER-GROSS: Yes. As I said, Sanford Gold  
19 doesn't seem to be working. I think we should have --

20 THE COURT: We can't say what his availability is if  
21 he is not there.

22 MR. WISSNER-GROSS: OK. OK.

23 MR. BUSHMAN: Your Honor, we would try our best, and  
24 we always try our best.

25 I don't appreciate the defense counsel's

1 characterization of the plaintiffs filed a lawsuit and  
2 therefore they must be available at any minute on any whim. We  
3 will make them available as we can make them available. I have  
4 no idea if they are available next week.

5 They served discovery on all of the plaintiffs. So we  
6 did a collection for all of the plaintiffs, not just the three  
7 Florida plaintiffs. If they did discovery as to just those  
8 three Florida plaintiffs, we probably would have had production  
9 done already, but they did everybody. So we pulled everybody  
10 and we are uploading everybody. We are uploading more and more  
11 as we go. This was not an easy process to do so, but we wanted  
12 to be sure --

13 THE COURT: I hear that.

14 MR. BUSHMAN: -- we wanted to make sure we did it one  
15 time and not piecemeal.

16 What I would say is production by next Friday  
17 definitely, and then I can work on Mr. Gold for the following  
18 week, though the 24th is the one he said he was definitely  
19 available. I know he helps care for Ms. Gold's children from  
20 time to time. So I have to make sure that all gets taken care  
21 of.

22 Mr. Rares, who is the other deponent, I doubt he is  
23 going to have much information. It was Ms. Gold, contrary to  
24 Mr. Gross' mischaracterization here at the hearing, it was  
25 Ms. Gold that chiefly was responsible for the investing. So

1       Mr. Rares will probably be a very short deposition, but we will  
2       try and make him available. We will check his availability. I  
3       will try and work with Mr. Gross off line, as I work with all  
4       my defense counsel, to get a date. This isn't something we  
5       should be bothering your Honor with. We will try and get it,  
6       be big boys and big girls and get it taken care of.

7                    MR. WISSNER-GROSS: Your Honor, if they can get --

8                    MR. BEST: Sig, let me take over.

9                    MR. WISSNER-GROSS: OK.

10                  MR. BEST: OK. I'm OK with defense's position on  
11        their production save one thing, your Honor. Again, as I  
12        explained to you, it takes less than five minutes to screenshot  
13        your activity up from your account and send it to us, despite  
14        the fact that they were obligated to provide that to us to date  
15        and have, in fact, made a production of other screenshots, they  
16        have not done that. So I want to get off this idea and the  
17        rouse that their production is so voluminous. If we can  
18        prioritize it and they can get us the basic screenshot  
19        information and essential screenshot information of their  
20        Florida-based clients' accounts at Voyager, that would satisfy  
21        our needs.

22                  Secondly, as regards their financial information, it  
23        is critical to know how they funded their accounts because you  
24        can only open up an account at Voyager either through a cash  
25        deposit or a crypto deposit, and if it is in crypto, that means

1 that they are well versed in the universe of cryptocurrency,  
2 have established accounts before, and have been trading  
3 cryptocurrency prior to their opening of the Voyager account.  
4 So it is extraordinarily relevant for this litigation.

5 THE COURT: OK.

6 MR. BEST: Thank you.

7 THE COURT: All right. So I hear two things there.  
8 You would like to prioritize the screenshots from the Florida  
9 individuals.

10 Is that something that you can do, Mr. Bushman?

11 MR. BUSHMAN: I believe we have produced the  
12 screenshots. If Mr. Best --

13 THE COURT: OK.

14 MR. BUSHMAN: Maybe it is better off line he can show  
15 me an example of the screenshot he wants.

16 I believe we produced screenshots showing the first  
17 investment, showing the deposit, showing the trading going on,  
18 but if there is some other screenshots that he wants -- I mean,  
19 technically we would have to screenshot every piece and page of  
20 the Voyager app, which would be probably thousands of different  
21 machinations, in order to fully comply with their discovery  
22 request.

23 So I will get with Mr. Best after this call --

24 MR. BEST: It's their trading activity.

25 MR. BUSHMAN: -- he can show me exactly -- I'm sorry.

1 I don't like to be interrupted, Mr. Best.

2 He can show me exactly what he wants. Maybe we are  
3 miscommunicating or maybe it is just I produced it for some and  
4 not all, and I will be happy to do that today, your Honor. I  
5 will get with Mr. Best and we will figure it out.

6 THE COURT: Thank you, Mr. Bushman.

7 Mr. Best, can you hold off a moment, please.

8 MR. BEST: It is as basic as --

9 THE COURT: Mr. Best, Mr. Best, I am going to have to  
10 ask you to hold off for just a moment so I can finish hearing  
11 what Mr. Bushman has to say and ask him one more question.

12 Thank you.

13 So you are going to meet with or discuss with Mr. Best  
14 later what he needs from these trading apps from the Voyager  
15 trading app, and I think that that will be helpful, so you can  
16 then make the Florida individuals a priority.

17 I want to point out something in Exhibit C that I have  
18 here, which is the chart for Mr. Swissner-Gross -- it's  
19 actually Wissner-Gross. Sigmund. Got it. Wissner-Gross -- is  
20 that there isn't anything here about Eric Rares.

21 MR. WISSNER-GROSS: That is because he is not a named  
22 plaintiff and he is the husband --

23 THE COURT: Got it.

24 MR. WISSNER-GROSS: -- of Rachel Gold.

25 THE COURT: So everything that is Rachel Gold. OK. I

1 understand.

2 MR. WISSNER-GROSS: They just told us recently that he  
3 is the one who made the trading decisions.

4 THE COURT: OK.

5 MR. BUSHMAN: Not true, your Honor. He keeps saying  
6 that. I have told him multiple times -- I have said it  
7 multiple times it is not true. Ms. Gold made the trading  
8 decisions. She used marital funds to fund the account and sign  
9 up the account but sign up the account in her husband's name.

10 THE COURT: OK.

11 MR. BUSHMAN: She clearly has standing under Eleventh  
12 Circuit and Southern District of Florida case law on that  
13 particular issue.

14 THE COURT: OK.

15 MR. BUSHMAN: We decided to make Mr. Rares available  
16 for deposition in case they had questions. He will have very  
17 limited knowledge.

18 THE COURT: I see.

19 MR. BUSHMAN: We are going to make him available for  
20 deposition.

21 MR. BEST: Your Honor --

22 THE COURT: I guess the thing is, yes, so if Mr. Rares  
23 is not even a plaintiff, how is it that he is being deposed in  
24 this case?

25 MR. BUSHMAN: Well, we made him available, your

1 Honor --

2 MR. BEST: Your Honor --

3 MR. BUSHMAN: -- because it was his --

4 THE COURT: Excuse me. I'm asking Mr. Bushman.

5 MR. BUSHMAN: I'm sorry. I can't --

6 THE COURT: I'm trying to ask Mr. Bushman.

7 MR. BUSHMAN: One person at a time, please.

8 We made him available for deposition in case we were  
9 going to potentially add him as a class representative.

10 THE COURT: I see.

11 MR. BUSHMAN: Because it was his account, even though  
12 Ms. Gold made all of the decisions for that account and,  
13 frankly, made all the decisions for Mr. Sanford Gold's account  
14 as well.

15 THE COURT: I understand.

16 MR. BUSHMAN: As they will find out in testimony.

17 THE COURT: OK. All right. Thank you very much.

18 Mr. Best. So then your other concern was that the  
19 crypto --

20 MR. BEST: If I may just respond to that. Your Honor,  
21 so you know, the reason why this all came to light is because  
22 Mr. Moskowitz told us in an email that Rachel Gold was a  
23 nominee account and did no trading activity and it was all her  
24 husband who opened the account and traded in it and offered him  
25 up as a deponent.

1 THE COURT: OK.

2 MR. BEST: I have no idea how to respond to what we  
3 are just hearing now, but that is -- literally, I can read you  
4 the email or we can find it in the next two minutes and read  
5 you the email that Mr. Moskowitz sent to us.

6 THE COURT: It is OK, Mr. Best. We have limited time  
7 and I don't want to go any further with that. Since the  
8 plaintiffs are offering this gentleman up for deposition, I  
9 think we don't really need to go any further. All that will be  
10 revealed during the deposition and as you get more evidence in  
11 the case.

12 I want to talk to you about what your Kerns were with  
13 the objections. I think that is really much more relevant or  
14 pressing, is that the information regarding crypto investments.  
15 I hear an argument that, Mr. Bushman, that the plaintiffs other  
16 cryptocurrency investments is relevant to show, I'm assuming,  
17 their level of sophistication in this type of market. How do  
18 you address that?

19 MR. BUSHMAN: First, their level of sophistication is  
20 irrelevant to the claims at issue. Number two, your Honor,  
21 whether or not they traded in crypto and then moved their  
22 assets to Voyager, the reason why they moved their assets to  
23 Voyager will be produced. It is whether or not they invested  
24 in some other crypto company and, to be honest with you, I  
25 don't really understand crypto as well as some. I could throw

1 out names like Blockchain and all this other stuff, but whether  
2 or not they invested in company A and put money in company A  
3 has nothing to do with whether or not and what they did --

4 THE COURT: On their reliance upon --

5 MR. BUSHMAN: -- to put their money into Voyager.

6 THE COURT: On their reliance upon Mr. Cuban. OK.

7 MR. BUSHMAN: Correct. Correct. I mean, if they had  
8 some sort of reliance upon Mr. Cuban, then they relied upon  
9 Mr. Cuban and that will be produced. If they invested in X  
10 other company and that company is still active and moving and  
11 going and they have money in that account, the defendants don't  
12 have a right to go on a fishing expedition to get every  
13 financial document that these plaintiffs have, and that is what  
14 they have asked for, your Honor.

15 You have to look at their request. Their request is  
16 basically everything and anything. If they want to amend their  
17 request and send us over another request that is much more  
18 tailored to what money they put into a Voyager account or where  
19 that money came from from a Voyager account, which we are  
20 producing anyway, but if they want to be more specific, I'm  
21 happy to deal with that.

22 It is way overbroad. It is crazy overbroad. I have  
23 never -- nobody would ever file a lawsuit against a particular  
24 company if they had to produce all information regarding their  
25 entire financial background in order to allow the case to go

1 forward. It is extraordinarily overbroad, beyond anything  
2 that's in the realm.

3 THE COURT: I agree with you that it is overbroad to  
4 ask about all other investments. As far as cryptocurrency  
5 investments, if they are asking simply where the cryptocurrency  
6 came from for them to make the trade into Voyager, I do think  
7 that would be relevant for purposes of showing that they do  
8 have some sophistication in the cryptocurrency market and they  
9 were moving from one cryptocurrency market or platform,  
10 essentially, to another.

11 MR. MOSKOWITZ: Your Honor, I think I have --

12 MR. BUSHMAN: We will agree to produce.

13 MR. MOSKOWITZ: I think I have a resolution.

14 MR. BUSHMAN: We will agree to produce --

15 THE COURT: I'm sorry. I am getting two different  
16 people speaking at the same time.

17 Mr. Bushman or Mr. Moskowitz --

18 MR. BUSHMAN: I defer to Mr. Moskowitz.

19 THE COURT: -- you're on the same side.

20 Mr. Moskowitz.

21 MR. MOSKOWITZ: I'm trying to help my friend out.

22 I think we can make this easier, Judge, because we  
23 hear you. They can ask in the deposition whatever they want.  
24 Let's just make it clear. Anything they want to ask in their  
25 deposition, they can ask. If they want to ask where the money

1 came, if they want to ask how many crypto did you invest in,  
2 that's one thing.

3 What Howard is talking about is what is their duty to  
4 go back and find documents. So I think if they really have an  
5 interest, which isn't relevant to the claim, but if they want  
6 to spend their time in their deposition asking them about their  
7 prior history or did they invest in crypto, I say we let them.  
8 I say that's fine. But what we are talking about now is we  
9 want to make sure that we have complied with our obligations to  
10 provide the documents that they have within their possession --

11 THE COURT: I understand.

12 MR. MOSKOWITZ: -- and I think everything about  
13 Voyager for a mom-and-pop investor, that's hard to do.

14 We hired an ESI company and they're going through  
15 texts and they're going through their databases. They don't  
16 know how to do it themselves. So we are getting them all.

17 I think the fair compromise, extremely fair, is you go  
18 at it, whatever you want to ask them, you go at it if it  
19 relates to their investment. If you want to go on a fishing  
20 expedition for seven hours, go do it.

21 THE COURT: Well, I think what we are talking about,  
22 as I see in deficiencies here, Mr. Moskowitz, according to  
23 defendants, is they didn't receive any documents identifying  
24 the source of funds for any transfers into the account, into  
25 the Voyager account.

1 MR. BEST: Correct.

2 THE COURT: So they are looking for documents  
3 identifying the source funds for transfers into the Voyager  
4 account. I do think that is a reasonable request.

5 MR. MOSKOWITZ: Absolutely, your Honor.

6 THE COURT: OK.

7 MR. MOSKOWITZ: I think Mr. Bushman said anything that  
8 relates to the Voyager trading, such as where did that money  
9 come from, that should be there. I agree.

10 THE COURT: OK.

11 MR. MOSKOWITZ: We don't disagree that anything about  
12 the Voyager trades, where did that money come from, where did  
13 that money go, I think that is all fair game.

14 THE COURT: All right. Thank you.

15 MR. BUSHMAN: I believe we produced it, your Honor,  
16 for at least most, if not all, of the plaintiffs. It says  
17 where did it come from. Checking account. So it didn't come  
18 from a crypto firm. It came from a checking account.

19 THE COURT: I see.

20 MR. BUSHMAN: Do they want the account number, the  
21 bank, the routing number, maybe some blank checks?

22 THE COURT: Then they will have to be more specific.

23 MR. BUSHMAN: If it comes from a crypto firm, it will  
24 say it there. If it doesn't say it, we will go find it.

25 THE COURT: OK.

1 MR. WISSNER-GROSS: Your Honor, could we --

2 MR. BEST: For instance, Robertson funded his Voyager  
3 account with cryptocurrency. We have no information from the  
4 plaintiffs as to the source of funds.

5 MR. WISSNER-GROSS: We don't know if it is his  
6 crypto --

7 MR. MOSKOWITZ: Ask him. You are going to depose him  
8 for seven hours.

9 MR. WISSNER-GROSS: This is a little bit  
10 unfortunate --

11 MR. BEST: With all due respect, I am speaking to the  
12 court.

13 THE COURT: Sorry. Sorry. Sorry.

14 MR. WISSNER-GROSS: Excuse me. This is --

15 THE COURT: One person at a time. One person at a  
16 time.

17 MR. WISSNER-GROSS: This is a double standard.

18 THE COURT: It is not possible for me to handle that.  
19 OK.

20 MR. WISSNER-GROSS: Your Honor --

21 THE COURT: So what I am hearing is that you want more  
22 information. You will have the information with regard to  
23 where the money came from, the source, and that's what you are  
24 asking for here on your document request. If you need further  
25 information, you can get that through the deposition, and

1 that's fine.

2 MR. WISSNER-GROSS: Your Honor, with respect to  
3 Mr. Robertson, we just have a specific concern.

4 THE COURT: And you will be able to address those.

5 MR. WISSNER-GROSS: The money in the account may not  
6 be his. He is claiming damages. We have no idea if he is  
7 trading other people's money. We have no idea.

8 THE COURT: All right.

9 MR. WISSNER-GROSS: And there is a fact pattern there  
10 that really, going into a deposition, has red flags all over  
11 it. So knowing the source and if he -- again, if people have  
12 other crypto accounts and they are actively trading in other  
13 crypto accounts -- with these accounts, you open an account and  
14 then you are buying and selling crypto. If they are actively  
15 engaging in a similar pattern in other accounts, in other  
16 crypto accounts --

17 MR. BUSHMAN: And let me --

18 THE COURT: That sounds like something you might want  
19 to file a motion on and I can take a look at if there is  
20 something specific --

21 MR. BUSHMAN: Right. Your Honor, the defendant should  
22 be very --

23 THE COURT: -- but I am not hearing in enough specific  
24 argument right now to be able to rule on that issue.

25 MR. BUSHMAN: Correct. Your Honor, the defendant

1 should be very careful what they wish for because Mark Cuban  
2 said he was all in, he was a Voyager investor, he put his money  
3 in, blah, blah, blah. Are we entitled to compare his crypto,  
4 all of his crypto investments across all of his crypto  
5 platforms to see if he truly was all in with Voyager or whether  
6 he just had a nominal investment compared to all of his other  
7 ones.

8 So we have to make sure that we keep our eye on the  
9 ball. We have to make sure we keep ourself very, very narrow,  
10 or else once we start to splinter, what is good for the goose  
11 is good for the gander, and then we will start asking for a  
12 whole bunch more stuff as it relates to Mr. Cuban.

13 MR. MOSKOWITZ: Well, Mr. Bushman, clearly whatever  
14 ruling we get --

15 MR. BUSHMAN: There is the eye on the ball.

16 MR. MOSKOWITZ: Whatever ruling we get about what  
17 account information is required, of course it is going to  
18 require to Mr. Cuban's account. If we have to tell you every  
19 plaintiff's money that came in, where did it go, why wouldn't  
20 that apply to Mr. Cuban?

21 MR. WISSNER-GROSS: Because your clients are the ones  
22 that are alleged are lying.

23 THE COURT: OK. Thank you, counsel. I am going to  
24 have to ask that everybody stop for a moment. We have only  
25 about ten minutes left and I have one more issue that we want

1 to address.

2 MR. BEST: If I may on this last point, your Honor.

3 This is Stephen Best.

4 It is as easy as this. Is Mr. Robertson funding his  
5 Voyager account in his name with his money or with other  
6 people's money?

7 The reason why that is important is because at about  
8 the same time he was noting in court filings his indigency  
9 status, we have reason to believe that he may have been funding  
10 his account with other people's money, which goes to his  
11 standing, because of course we have to believe that he is not  
12 going to make a fraudulent filing in another court of Florida,  
13 at the same time he is funding his crypto account with \$30,000.  
14 That is a very relevant issue, and that is one of the reasons  
15 I'm bringing it up in its simplest form, we would like to get  
16 clarity on.

17 THE COURT: Thank you.

18 Let's move on to the final topic that we can discuss  
19 today, which would be the depositions of Mr. Mackey and  
20 Mr. Tapply. These are individuals from the basketball, the  
21 Mavericks.

22 MR. MOSKOWITZ: Yes, your Honor. We asked in an  
23 interrogatory --

24 THE COURT: Have dates been presented to the  
25 plaintiffs with regard to their depositions?

MR. MOSKOWITZ: So we have asked in an interrogatory who has personal knowledge about the Voyager/Mavericks contract and about the press conference. Who planned it? How did you target the people? What were the education that you were going to provide to the different people? We know it reached Florida, but those are things that we can contest later. We need the discovery.

So Mr. Boies raised the issue last week in the hearing and he said, if we are going to set any of the plaintiff's depositions, which are brand new because those weren't sought until after the motion to stay, we could at least take some of the Maverick depositions. You are letting Mr. Cuban go 90 days away, but how about Mr. Mackey and Mr. Tapply, because they're the communications directors. Your Honor said, I see no reason why you can't depose them in January. Mr. Boies said, thank you very much for that ruling, your Honor.

So they were supposed to go before any of these plaintiffs, because they're not Mr. Cuban, they're not billionaires. We have been asking them for a couple of months. Your Honor ended the ruling with, I see no reason they shouldn't be produced in January.

So we followed up and asked them in a meet and confer, and their response was, we don't have any dates for you for either of them in January, period. We said, please, reconsider that before we have to go back to Judge Reid. Here's the

1 transcript. She told Mr. Boies, you can definitely get these  
2 two people in January. Judge Altman denied the motion to stay.  
3 They're just asking for two. And we don't have a date.

4 THE COURT: OK. Mr. Wissner-Gross. Who is going to  
5 handle that?

6 MR. WISSNER-GROSS: Your Honor, I think,  
7 unfortunately, that Mr. Moskowitz has mischaracterized the  
8 transcript. As I recall, and I'm happy to go back, I think we  
9 said we are not sure of their availability.

10 We have gone back to check their availability.  
11 They're available between February 25th and February 28th. We  
12 have asked if those dates would work. We have asked for dates  
13 for them for March. Some of this gets tied into their work at  
14 the Mavs in terms of other commitments.

15 We have been advised --

16 MR. BEST: Including the All-Star Game, which they are  
17 utterly and completely consumed with during this period of  
18 time.

19 THE COURT: Mr. Best, I really appreciate your  
20 comments but it is hard for me to hear both you and  
21 Mr. Wissner-Gross, and since you are both on the same team, so  
22 to speak, I will hear what Mr. Wissner-Gross has to say.

23 MR. WISSNER-GROSS: They are available in Dallas  
24 during the period February 25 to February 28.

25 THE COURT: Why can't they be available earlier?

MR. WISSNER-GROSS: They're just not. I mean, our understanding is they are not available. As Mr. Best said, they have other commitments with the Mavs.

THE COURT: Because of work commitments?

MR. WISSNER-GROSS: Yes.

THE COURT: So, Mr. Moskowitz, why do you need to depose them before the February 25th date?

MR. MOSKOWITZ: Your Honor, this was the only depositions we were seeking. Now the discovery has been pending five months. These are individuals that the Mavericks identified under oath as having personal knowledge of the Voyager/Maverick connection and the press conference. This is their marketing director. So if there is anybody who is going to know about jurisdictional discovery, it is going to be them.

THE COURT: OK.

MR. MOSKOWITZ: We know that the January 3rd discovery, your Honor, those 25 documents, they didn't include a single document from any of those four individuals. So clearly it falls within jurisdictional discovery, but as Mr. Boies told you, how is it fair if we have been asking for four months for these two individuals and he said you can give Mr. Cuban 90 days, he may be some billionaire, although he was on CNBC yesterday talking about cryptocurrency, but give him three months. But just these two regular professionals that have personal knowledge, you are going to give them November,

1 December, January, a pass for all of this, when now Judge  
2 Altman has finally set a deadline of February 24th? They  
3 ironically want to give us the day after we have to do it?

4 Your Honor ruled, and with have the transcript. If  
5 they need the transcript -- you said to Mr. Boies: What would  
6 you like. He said: Judge, I would just like them in January.  
7 And you said: I see no reason why that can't happen.

8 That is how we ended up. That was your Honor's ruling  
9 December 20th. So you had given them six weeks to give us any  
10 two dates for these individuals, that are not the President of  
11 the United States. There is no apex affidavits. There is no  
12 affidavits in the record that they have some incredible  
13 responsibility.

14 You told Mr. Boies: I think getting them in January,  
15 if they're demanding plaintiffs' depositions, that's  
16 reasonable. And we never got it. Now we are up to January 6th  
17 and we still don't have their deposition.

18 I think it is reasonable for you to order them within  
19 the next 30 days to give us one day in any location -- we will  
20 go fly out there -- to take each of their depositions. Judge  
21 Altman denied the motion to stay. This is all we have. We are  
22 not asking for ten depositions. We asked for two, and the only  
23 reason we picked them is they identified them as personal  
24 knowledge about the Voyager/Mavericks contract and about the  
25 press conference where Mr. Cuban says I'm targeting all of the

1 Mav fans around the country. We think that's reasonable.

2 THE COURT: Mr. Moskowitz, when did they identify  
3 these two witnesses?

4 MR. MOSKOWITZ: I believe in August to state early  
5 December.

6 THE COURT: OK. Mr. Wissner-Gross, I'm very concerned  
7 that the first date they are available is the date after the  
8 motion must be filed. I'm very concerned. There must be some  
9 way to get them earlier than that.

10 MR. WISSNER-GROSS: Your Honor, first of all, let's  
11 correct the record. He said that they were identified four to  
12 five months ago. They were first identified in November.

13 THE COURT: OK.

14 MR. WISSNER-GROSS: Not four to five months ago.

15 THE COURT: All right.

16 MR. WISSNER-GROSS: In November in a discovery  
17 response. I don't remember when. It was thereafter that he  
18 requested their deposition. So not four to five months ago.  
19 They were first identified in November and then in December at  
20 the hearing.

21 As I recall -- I can go back and check the  
22 transcript -- I had indicated that we weren't sure about their  
23 availability. I know Mr. Boies interjected in the end, well,  
24 gee, we'd like to take them. These are senior executives.  
25 Mr. Best has talked about their commitments. They are not

1 retired like some of the plaintiffs.

2 THE COURT: I understand.

3 MR. WISSNER-GROSS: They have travel and other  
4 commitments. I actually -- we could give them dates in March,  
5 but would it be any different if he wants March? These are the  
6 first dates. I haven't spoken to them. This is what been  
7 communicated to me as the earliest availability.

8 THE COURT: OK. Well, here's the court's concern.  
9 Because we have an extended deadline now of February 24th,  
10 their depositions are needed prior to that.

11 MR. WISSNER-GROSS: He can say as much as he wants  
12 that they are relevant to jurisdiction. They have nothing to  
13 do with jurisdiction. You know what, he is going to get  
14 document production on a rolling basis --

15 THE COURT: So then maybe what we need to do --

16 MR. WISSNER-GROSS: -- starting on the 13th. If he  
17 sees --

18 THE COURT: -- is have their document production to  
19 show that they don't have any knowledge.

20 When will their documents be produced?

21 MR. WISSNER-GROSS: Let's prioritize that on a rolling  
22 production. He is not bashful. If he thinks that there is a  
23 credible basis, that he really needs them on the issues of  
24 jurisdiction, for example, we can come back to the court.

25 THE COURT: OK. So let me go back to that. When were

1 documents requested from those individuals?

2 MR. WISSNER-GROSS: Unfortunately, I haven't been  
3 involved. It is the associates. My understanding is that  
4 there was a general search which would have covered them as  
5 well as part of the process by which the jurisdictional  
6 documents were produced. So I think there was a search within  
7 the Mavs organization for any hits for Florida or contacts that  
8 would have been relevant.

9 MR. MOSKOWITZ: Your Honor, this is my concern. Your  
10 Honor, this is my concern. When we got the jurisdictional  
11 discovery, OK, and that is why I played those videoconferences  
12 for you. This is a national press conference where he says  
13 we're targeting our Mavs fans all across the country, and Steve  
14 Ehrlich is saying the reason we got Mark Cuban is he is  
15 nationwide known, famous, for cryptocurrency, and two weeks  
16 later or a few weeks later Mark Cuban comes to Miami and he is  
17 the headliner in the conference. So that is the targeting that  
18 Mr. Boies asked you about.

19 They went and somehow got all the documents from these  
20 four people that know about the conference and there is not a  
21 single document about how they planned the press conference,  
22 who they targeted. I mean, this is --

23 MR. WISSNER-GROSS: No, no, no.

24 MR. MOSKOWITZ: Can I finish?

25 This is a great corporation. They plan things very

1 carefully. So they know who they are targeting. They know who  
2 they want to go after. Mr. Cuban says, we're going to do  
3 education around the country, we're going to reach all of our  
4 fans. Where are the documents about all of that, where their  
5 marketing people are going to target? How much was the  
6 response? We know 40 million was sold in the State of Florida.  
7 It was a very successful press conference.

8 So what I'm saying is they went through, they said  
9 they did a check. They didn't because they didn't produce one  
10 document from these four. So let's get their documents next  
11 week and let's get a date within the month to depose these two  
12 people.

13 In any other case besides a billion dollar damage case  
14 like we have here two depositions and their documents would be  
15 nothing. We just went through the investors that are  
16 struggling. Here we want two Mav executives that in November  
17 were identified as having personal knowledge. Not just  
18 involved, they had personal knowledge. We want all their  
19 documents within -- it was supposed to be January 3rd. Give  
20 them another week and give us their documents by the end of  
21 January so we can use it before the February 24th deadline. We  
22 think that's very reasonable.

23 MR. WISSNER-GROSS: Your Honor, I'm advised, and this  
24 is the qualification -- I didn't personally do the document  
25 review -- I am advised in realtime that in connection with the

1 January 3rd production that any jurisdictional documents these  
2 two individuals would have had have been reviewed. In other  
3 words, there's been no self-selection.

4 Again, I come to the point that I think Mr. Moskowitz  
5 is embellishing substantially in terms of the -- at the press  
6 conference itself what actually Mr. Ehrlich said is he is  
7 looking at an opportunity for developing crypto in Dallas. You  
8 won't find any reference to Florida.

9 THE COURT: I'm struggling to understand. There's a  
10 lot --

11 MR. WISSNER-GROSS: That becomes -- in any event,  
12 we're happy --

13 THE COURT: Mr. Wissner-Gross, I'm struggling to  
14 understand something here. OK. There were documents requested  
15 at some point from representatives of the Mavericks regarding  
16 the press conference?

17 MR. WISSNER-GROSS: The request is -- documents in  
18 connection with the press conference are part of the general  
19 review that I said is going on. We are going to be giving  
20 rolling production on the 13th.

21 THE COURT: And those documents have not yet been  
22 produced.

23 MR. WISSNER-GROSS: What we did is we accelerated the  
24 production for January 3rd for any documents, regardless of  
25 from whom, that would relate to any contacts by either the

1 Mavs, and these two individuals work for the Mavs, or Mr. Cuban  
2 with Florida. So if Mr. Cuban, for example --

3 THE COURT: OK.

4 MR. WISSNER-GROSS: -- if he had a family vacation in  
5 Florida, it was produced.

6 For the Mavs, the search was done to see if there are  
7 any contacts whatsoever by the Mavs in any respect to the State  
8 of Florida.

9 THE COURT: That's Florida.

10 MR. WISSNER-GROSS: Yes.

11 THE COURT: Now we are talking about press conferences  
12 and promotions.

13 MR. WISSNER-GROSS: There's only one press conference  
14 on January -- excuse me, on October 27, 2021 in Dallas. One.  
15 That's it.

16 THE COURT: OK.

17 MR. WISSNER-GROSS: No --

18 MR. BOIES: Your Honor --

19 THE COURT: OK. So have you produced the documents  
20 with respect to that?

21 MR. BOIES: Your Honor, can I just address one thing?  
22 They said that they produced all the jurisdictional documents.

23 THE COURT: Right.

24 MR. BOIES: The problem is, what they did, and this is  
25 what they said, they produced all the documents with respect to

1 travel.

2 THE COURT: Exactly.

3 MR. BOIES: Jurisdiction is broader than that.

4 THE COURT: Than physical presence. That is what I am  
5 trying to get at with Mr. Wissner-Gross.

6 MR. BOIES: It's been almost a month, not quite a  
7 month, it was almost a month since they were told to produce  
8 people in January. I know people are busy. Most of my  
9 practice is representing large corporations. Executives make  
10 themselves available for depositions in court cases,  
11 particularly when it is a one-day deposition in federal court.  
12 So it just can't be that these two people can't be made  
13 available for a deposition in January.

14 THE COURT: It seems to me that that is the case.

15 We are going on cross-purposes, Mr. Wissner-Gross. If  
16 you are talking about, yes, you produced documents with respect  
17 to connections with Florida, but we are talking about  
18 connections with respect to promotion of cryptocurrency by  
19 Mr. Cuban, and it is bigger than that. So my concern is this.

20 These two individuals have been identified by your  
21 company, by your client as individuals having that knowledge.  
22 They need to be available for depositions before, significantly  
23 before February 24 in order for their knowledge, their  
24 testimony, their information to be part of the response with  
25 regard to jurisdiction.

1 MR. WISSNER-GROSS: Your Honor, can we --

2 THE COURT: So let's go back and see if you can  
3 discuss with them their availability prior to February 24th,  
4 and it would at least have to be within the first two weeks of  
5 February.

6 MR. WISSNER-GROSS: So are you talking about their  
7 knowledge with respect to issues pertaining to jurisdiction or  
8 more generally?

9 THE COURT: Well, let's not say jurisdiction because  
10 when we say that word we don't have the same understanding.

11 MR. WISSNER-GROSS: Your Honor, we respectfully submit  
12 that we are happy to prioritize the production, the rolling  
13 production to focus on documents, for example, on the press  
14 conference --

15 THE COURT: Good.

16 MR. WISSNER-GROSS: -- whatever role they had with the  
17 press conference. Let's do that. Then if the plaintiffs think  
18 that there is a basis for --

19 THE COURT: No, prioritize it for before the end of  
20 January.

21 MR. WISSNER-GROSS: I am talking about not deposition,  
22 but let's give them the documents.

23 THE COURT: Good.

24 MR. WISSNER-GROSS: I don't think there is a credible  
25 basis --

THE COURT: Let's start with that. Documents before the end of January. But then deposition.

MR. WISSNER-GROSS: Let's prioritize that and let the plaintiffs make -- because I don't think they will be able to make the case -- let them make the case as to why they absolutely need to have these two individuals before the 24th.

I mean, they are going to have, as I said, on a rolling basis all the documents that relate to the press conference, relating to any interactions, the Mavs with Voyager after the press conference, relating to the approach to the Mavs that was by Voyager beginning in August. They will have that.

MR. MOSKOWITZ: Your Honor, we are back-pedaling now.

MR. BOIES: Allen, Allen, Allen, can I just say something?

THE COURT: Excuse me. Everyone. Everyone. Hold on just a minute.

Mr. Wissner-Gross, I don't want to have to come back on this issue, and I don't see any reason to. I think, yes, I agree you should prioritize your document production for that before the end of January, but I would like for you to go back to these individuals, Mr. Mackey and Mr. Tapply, and get dates prior to February 24th for their depositions.

MR. WISSNER-GROSS: We will go back and consult with them, your Honor. As I said, I am not the one in contact with

1 them. I mean, I was told that they have other commitments.

2 THE COURT: I understand.

3 MR. WISSNER-GROSS: Business commitments. These are  
4 the dates they are available. I did not want to give dates in  
5 March. I figure that I could do March, but I tried to figure  
6 out what the earliest date was available.

7 Respectfully, your Honor, I still think that the  
8 articulation of the concept that because the law is that if  
9 there is a press conference in Dallas that that provides a  
10 basis for jurisdiction in Florida is just not supported in the  
11 law.

12 THE COURT: And we can argue that. We can argue that,  
13 but I don't want to go down that road. That is the allegation  
14 that's been made and the discovery needs to be then produced  
15 prior to the 24th. We have already asked Judge Altman for an  
16 extension and he has been very generous in granting that. So  
17 we want to work within that extension.

18 As I understand it, you are going to prioritize any  
19 document discovery for those gentlemen before the end of  
20 January and then go back to them and get a date prior to the  
21 24th of February for their deposition.

22 MR. WISSNER-GROSS: On a rolling basis, as I said. We  
23 explained to you the process we are going through.

24 We spent a lot of time and effort. They can minimize  
25 as they want. We did produce a lot of documents on

1 jurisdiction. The fact that it doesn't show what they want it  
2 to show, and it's confirmatory exactly what is in the  
3 declaration, doesn't mean that we haven't done a lot of work to  
4 produce everything.

5 THE COURT: I appreciate that.

6 MR. WISSNER-GROSS: We hear you, your Honor. So I  
7 will go back and we will speak internally.

8 THE COURT: I appreciate that. OK. So we have  
9 resolved that. So going back to the issue with regard to the  
10 depositions of the plaintiffs. Because there are documents  
11 still to be produced in advance of their depositions, and we  
12 don't know yet their availability for the dates on the 12th and  
13 the 13th, what I propose is that both sides work as quickly as  
14 possible to get those documents in order and produce, plaintiff  
15 should produce the rest of the documents requested as we have  
16 discussed. However, we have to be cognizant of the fact that  
17 there are schedules involved.

18 The dates of January 23rd and 24th have already been  
19 offered, and they certainly fall within the month of January  
20 and are well within the discovery period for February 24 that  
21 the court has extended. So if it has to be that those  
22 depositions are on the 23rd and 24th, I see no prejudice to the  
23 defendants, and that the only give them more time to review the  
24 documents that the plaintiffs are producing by the end of next  
25 week.

1                   So having heard all of the arguments, I think that has  
2 resolved most of the major issues that we needed to look at  
3 today.

4                   MR. MOSKOWITZ: The only remaining issue, Judge, is a  
5 small one but it relates to jurisdiction. One of the  
6 components by the Supreme Court is whether you have a financial  
7 interest when you're targeting that district. They have  
8 already told us that Mr. Cuban had his own Voyager account.  
9 He's very happy with it. He traded in it for a few months.  
10 All we have been asking for is give us the information for  
11 Mr. Cuban's trading account, and we'd like to have that next  
12 week. We thought that was --

13                  MR. BEST: Your Honor, I'll make this clear, your  
14 Honor. At the same time they turn over the trading information  
15 for their Florida-based clients, we'll turn over the trading  
16 information, now that we understand that this is not a  
17 jurisdictional discovery deposition for Cuban, we will be  
18 turning it over as well.

19                  MR. BUSHMAN: We turned it over last night, your  
20 Honor.

21                  MR. MOSKOWITZ: We turned ours over, and this is  
22 just -- David.

23                  MR. BOIES: If they say they will turn it over when we  
24 turn it over, we ought to accept that and we ought to make  
25 clear that we be sure we turn ours over and then we want to ask

1 them for theirs.

2 MR. BEST: Thank you very much.

3 THE COURT: That sounds like an excellent plan.

4 All right. Thank you, gentlemen.

5 (Adjourned)

6

7 C E R T I F I C A T E

8

9 I hereby certify that the foregoing is an accurate  
10 transcription to the best of my ability of the digital audio  
11 recording in the above-entitled matter.

12

13 January 9, 2023

s/ Joanne Mancari  
Joanne Mancari, RPR, CRR, CSR  
Court Reporter  
jemancari@gmail.com

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A VOICE: [2] 13/7 35/7  
 MR. BEST: [34] 4/21 13/8 13/23 14/12  
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 MR. BOIES: [21] 4/12 4/17 25/8 34/23  
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 MR. BUSHMAN: [60] 48/25 49/2 49/5  
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 MR. KNIGHT: [3] 10/12 10/14 29/17  
 MR. MOSKOWITZ: [54] 4/7 5/13 9/25  
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 MR. WISSNER-GROSS: [132]  
 MS. WOLKINSON: [1] 54/11  
 THE COURT: [231]

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